No. 01-651

IN THE

Supreme Court of the United States

THE CHASE MANHATTAN BANK, as Indenture Trustee, under the Indenture, dated as of May 6, 1998,

Petitioner,

v.

TRAFFIC STREAM (BVI) INFRASTRUCTURE LIMITED,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED OCTOBER 19, 2001
CERTIORARI GRANTED JANUARY 4, 2002

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APPENDIX A — RELEVANT DOCKET ENTRIES OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

U.S. District Court
Southern District of New York

CIVIL DOCKET FOR CASE #: 99-CV-4056

The Chase Manhattan v. Traffic Stream (BVI)
Filed: 06/04/99
Assigned to: Judge Shira A. Scheindlin
Demand: $0,000
Nature of Suit: 190
Lead Docket: None
Jurisdiction: Diversity
Dkt # in other court: None
Cause: 28:1332 Diversity: Breach of Contract

THE CHASE MANHATTAN BANK, as Indenture Trustee, under the Indenture, dated as of May 6, 1998.
plaintiff

Sarah L. Reid
[COR LD NTC]
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101 Park Avenue
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v.

TRAFFIC STREAM (BVI) INFRASTRUCTURE LIMITED
defendant

Appendix A

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[COR LD NTC]
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6/4/99 1 COMPLAINT filed; Summons issued and Notice pursuant to 28 U.S.C. 636(c); FILING FEE $ 150.00 RECEIPT # 346561 (bm) [Entry date 06/07/99]

8/6/99 8 AMENDED ANSWER to Complaint by Traffic Stream (BVI): amends [6-1] answer (ls) [Entry date 08/09/99]

2/2/00 21 OPINION AND ORDER #83429; granting [10-1] motion for an order pursuant to rule 56 of the F.R.C.P. for summary judgment on all counts of the complaint against dft. Traffic Stream (BVI) Infrastructure Limited. Pltff is directed to foreclose on the Collateral Accounts and to submit a request for a deficiency judgment by 2/18/00. Deft must provide the required financial reports to pltff by 2/18/00. Once the Court sets reasonable attys' fees, the parties are directed to prepare a final judgment. (signed by Judge Shira A. Scheindlin); Copies mailed. (sac) [Edit date 02/03/00]

Appendix A

5/9/00 26 JUDGMENT #00,1079; Purs to the Court's Opinion and order dated May 8, 2000, a deficiency judgment is entered in the amount of $98,388,352.74; the Court also finds that the value of certain additional collateral, namely pledged shares of four Hong Kong companies owned by defendant and/or its shareholders will be applied against the deficiency judgment when two conditions have been satisfied, specifically transfer of ownership and an adequate, independent valuation, the value of these companies; (signed by James M. Parkison, Clerk of the Court); Mailed copies and notice of right to appeal. Entered On Docket: 05/11/00. (djc) [Entry date 05/11/00]

5/10/00 27 MEMORANDUM OPINION AND ORDER #83943, the Judgment Clerk is hereby ordered to prepare a deficiency judgment in the sum of $98,388,352.74, as further set forth in this document in accordance with this opinion (signed by Judge Shira A. Scheindlin); Copies mailed; (forwarded orig. doc. to the Judgment Clerk) (cd) [Entry date 05/11/00]

[END OF DOCKET: 1:99cv4056]

APPENDIX B — RELEVANT DOCKET ENTRIES OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

GENERAL DOCKET FOR
Second Circuit Court of Appeals

Court of Appeals Docket #: 00-7721
Filed: 6/8/00
Nsuit: 4190
Contract: Other Contract Action
Chase Manhattan v. Traffic Stream (BVI)
Appeal from: U.S. District Court SDNY

Case type information:

1) Civil
2) Private
3) None

Lower court information:

District: 0208-01: 99-cv-4056
Trial Judge: Shira A. Scheindlin
Date Filed: 6/4/99
Date order/judgment: 5/9/00
Date NOA filed: 6/7/00

Fee status: Paid

Prior cases: None

Current cases: None

Appendix B

Panel Assignment:

Panel: JMcL RDS RNC 1705 :CA2 12/1/00 am
Date of decision: 5/24/01

CHASE MANHATTAN BANK, as Indenture Trustee, under the Indenture, dated as of May 6, 1998
Plaintiff-Appellee

Sarah L. Reid, Esq.
(212) 808-7800
[COR LD NTC ret]
Kelley, Drye & Warren LLP
101 Park Avenue
New York, NY 10178

v.

TRAFFIC STREAM (BVI)
INFRASTRUCTURE LIMITED
Defendant-Appellant

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Appendix B

6/8/00	Copy of notice of appeal and district court docket entries on behalf of Appellant Traffic Stream (BVI) filed. [00-7721] Form C due on 6/19/00. Form D due on 6/19/00. (cv77)
8/15/00	Appellant Traffic Stream (BVI) joint appendix filed w/pfs. Number of volumes: 1. (cv77)
12/1/00	Case heard before McLAUGHLIN, SACK, C.JJ., CHATIGNY, D.J. (TAPE: 14) (ca96)
12/11/00	Appellant Traffic Stream (BVI) post argument letter brief filed. CC: Panel (cv72)
12/18/00	Appellee Chase Manhattan Bank post argument letter brief filed. (cv72)
5/24/01	Judgment of the district court is REVERSED & REMANDED by published unsigned PER CURIAM opinion filed. (cv72)
5/24/01	Judgment filed. [Entry Date: 5/24/01] (cv72)
7/24/01	Order FILED DENYING petition for REHEARING [1873288-1] by Appellee Chase Manhattan Bank, endorsed on motion dated 6/7/01. (cv72)
12/6/01	Order FILED GRANTING motion for stay [1968087-1] by Appellee Chase Manhattan Bank, endorsed on motion form dated 11/20/01. Before Hon. JMcL, RDS, Circuit Judges, Hon, RNC, District Judge. For The Court, AH, AA (cv72)

APPENDIX C — COMPLAINT DATED JUNE 3, 1999

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CIVIL ACTION NO. 99 CIV. 4056

THE CHASE MANHATTAN BANK, AS INDENTURE TRUSTEE, UNDER THE INDENTURE, DATED AS OF MAY 6, 1998,

Plaintiff,

-against-

TRAFFIC STREAM (BVI) INFRASTRUCTURE LIMITED,

Defendant.

COMPLAINT

Plaintiff, The Chase Manhattan Bank, as Indenture Trustee (the "Trustee"), under the Indenture, dated as of May 6, 1998 (the "Indenture"), of Traffic Stream (BVI) Infrastructure Limited ("Traffic Stream BVI" or "Defendant"), pursuant to which were issued $119,000,000 aggregate principal amount of Traffic Stream BVI's 14¼% Senior Secured Notes due 2006 (the "Notes"), by and through its attorneys, Kelley Drye & Warren LLP, alleges:

JURISDICTION

1. This Court has jurisdiction over this case pursuant to 28 U.S.C. § 1332. The amount in controversy exceeds $75,000.

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THE PARTIES

2. The Trustee, The Chase Manhattan Bank, is a corporation existing under and by the laws of the State of New York, authorized to exercise trust powers, with its Capital Markets Fiduciary Services office located at 450 West 33rd Street, New York, New York 10001.

3. Upon information and belief, Defendant Traffic Stream BVI is a corporation organized and existing under the laws of the British Virgin Islands, with its principal office at P.O. Box 957, Offshore Incorporations Centre, Road Town, Tortola, British Virgin Islands.

NATURE OF CLAIM

4. This is an action for breach of contract arising out of Defendant's breach of its obligations under the Indenture and related documents. The Trustee seeks an Order of Foreclosure on certain collateral which secures the Defendant's obligations under the Notes and the Indenture. Specifically, the Trustee seeks an Order granting it control of certain accounts (the "Collateral") held at The Chase Manhattan Bank, 450 West 33rd Street, New York, New York. The Trustee is entitled to possession of the Collateral because of the occurrence of Events of Default under the Indenture for which the Collateral is security. The Trustee also seeks an Order specifically enforcing the Defendant's obligations to provide the Trustee with financial information and directing an accounting from the Defendant.

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BACKGROUND

5. The Defendant is a British Virgin Islands corporation which indirectly owns interests in thirteen Chinese-foreign cooperative joint ventures (the "Joint Ventures") which operate six toll-road projects ("Project Toll Roads") in China.

6. Upon information and belief, the Defendant owns interests in the Joint Ventures through four wholly owned subsidiaries incorporated under the laws of Hong Kong: (i) South-East Asia (China) Infrastructure Limited; (ii) South-East Asia Strategy Limited; (iii) South-East Asia Shao Fu Development Company Limited; and (iv) Traffic Stream Infrastructure Company Limited (collectively, the "Hong Kong Companies"). Each Hong Kong Company also issued certain non-voting deferred shares to two individuals, Ng Hon Leung and Ng Yu-Kim, and South-East Asia Investment Holding Co., Ltd. ("Holding") (each individual and Holding collectively, the "Other Shareholders"). Holding is a company incorporated under the laws of Hong Kong.

7. On or about May 6, 1998, the Defendant and the Trustee entered into the Indenture, pursuant to which the Defendant issued its 14¼% Senior Secured Notes due 2006, to holders of the Notes (the "Holders"), in the aggregate principal amount of $119,000,000. (A copy of the Indenture is attached hereto as Exhibit A).

8. According to the Indenture, "[t]his Indenture and the Notes shall be governed by and construed in accordance with the laws of the State of New York." (Ex. A, § 111).

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9. Pursuant to Section 112 of the Indenture, the Defendant has consented to the jurisdiction of this Court for any action, whether at law or in equity, brought in connection with the Indenture or the Notes:

> The [Defendant] irrevocably submits to the jurisdiction of any court of the State of New York or any United States federal court sitting in the Borough of Manhattan, New York City, New York, United States, and any appellate court from any thereof, and waives any immunity from the jurisdiction of such courts over any suit, action or proceeding that may be brought in connection with this Indenture or the Notes. The [Defendant] irrevocably waives, to the fullest extent permitted by law, any objection to any suit, action or proceeding that may be brought in connection with this Indenture or the Notes, including such actions, suits or proceedings relating to securities laws of the United States of America or any state thereof, in such courts whether on the grounds of venue, residence or domicile or on the ground that any such suit, action or proceeding has been brought in an inconvenient forum. The [Defendant] agrees that final judgment in any such suit, action or proceeding brought in such court shall be conclusive and binding upon the [Defendant] and may be enforced in any court to the jurisdiction of which the [Defendant] is subject by a suit upon such judgment.

(Ex. A, § 112(a)).

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10. Pursuant to the Indenture, interest on the Notes is payable semi-annually in May and November each year, commencing on November 1, 1998. (Ex. A, § 301).

11. The payment obligations of the Defendant under the Notes are secured by the grant of security interests in favor of the Trustee. The Collateral includes, but is not limited to, the following accounts: the Debt Service Reserve Account, the Construction Funding Account, the Joint Venture Distribution Account and the Note Redemption Account and all amounts deposited therein at any time (the "Collateral Accounts"). Section 1301 of the Indenture provides that:

> As security for the payment and performance by the [Defendant] of its obligations under this Indenture and the Notes, upon the terms and conditions set forth in this Indenture, (A) the [Defendant] hereby grants to, and charges by way of a first fixed charge in favor of, the Trustee for the benefit of the Holders of the Notes a first priority security interest in all the [Defendant's] rights, title and interest in and to (i) the Debt Service Reserve Account, the Construction Funding Account, the Joint Venture Distribution Account and the Note Redemption Account and all amounts deposited therein at any time (the "Collateral Accounts");

(Ex. A, § 1301).

12. The Trustee perfected its security interests in the Collateral by possession, in accordance with applicable law.

13. The purpose of the Debt Service Reserve Account is to secure the Defendant's obligation to pay the interest owed by the Defendant on the Notes on each Interest Payment Date. The Indenture requires the Defendant to, within 30 days of an Interest Payment Date, ensure that the amount in the Account equals the amount of interest due and payable on the Notes on the next succeeding Interest Payment Date. (Ex. A, § 1304). The present balance of the Debt Service Reserve Account is $9,070,618.78.

14. The Construction Funding Account was created to fund the construction of Project Toll Roads. The Indenture required the Defendant to deposit, and the Defendant deposited, $105,131,250.00 into the Construction Funding Account on the issue date. (Ex. A, § 1305). After several withdrawals to fund part of the construction of the Toll Roads, the present balance of the Construction Funding Account is $38,026,524.10.

15. The Joint Venture Distribution Account was to be comprised of deposits by the Joint Ventures of all amounts relating to distributions payable to the Hong Kong Holding Companies pursuant to the applicable Joint Venture Contracts. It was also to be comprised of Capital Contributions received by the Trustee pursuant to Section 1017 of the Indenture. (Ex. A, § 1306). There is currently a balance of $1,680.96 in the Joint Venture Distribution Account.

16. The funds in the Note Redemption Account are to be used to redeem selected Notes held by Holders on each Mandatory Redemption Date starting on May 1, 2001. The funds are to be transferred from the Joint Venture Distribution

Account. (Ex. A, § 1307). There are currently no funds in the Note Redemption Account.

17. In addition, under the Indenture and the Letter of Credit Procurement and Deposit Agreement (the "LOC Agreement"), dated May 6, 1998, by and among the Defendant, Traffic Stream Infrastructure Holdings Company Limited ("Traffic Stream Holdings"), Traffic Stream (China) Infrastructure Company Limited ("Traffic Stream (China)"), Mr. Ng Hon Leung, and China Nonferrous Metals Holdings (Hong Kong) Limited ("CNMH"), Traffic Stream Holdings, Traffic Stream (China), Mr. Ng Hon Leung and CNMH each agreed to procure and deliver a Letter of Credit (the "LOC") in the amount of $8,058,750 to the Trustee on or before January 6, 1999. (A copy of the LOC Agreement is attached hereto as Exhibit B). Both Traffic Stream (China) and Traffic Stream Holdings also agreed to replace the LOC by depositing, no later than May 6, 1999, cash in the aggregate amount of $8,058,750 into the Construction Funding Account.

18. The Indenture provides that upon the occurrence of an Event of Default, the Trustee or the Holders of not less than 25% in aggregate principal amount of the Notes outstanding may, and under certain circumstances the Trustee must, "declare the principal of, premium, if any, and accrued interest on all of the Outstanding Notes immediately due and payable, and upon any such declaration all such amounts payable in respect of the Notes shall become immediately due and payable." (Ex. A, § 502).

19. Pursuant to the Indenture, if a default in the payment of interest or principal occurs, the Defendant, upon demand of the Trustee, must pay the whole amount due:

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The [Defendant] covenants that if: (a) default is made in the payment of any installment of interest including Additional Interest, if any, any Additional Amounts, if any, on any Note when such interest or Additional Amounts becomes due and payable and such default continues for a period of five Business Days, or (b) default is made in the payment of the principal of or premium, if any, on any Note at the Stated Maturity thereof, or on any Mandatory Redemption Date, *the [Defendant] will, upon demand of the Trustee, pay to the Trustee for the benefit of the Holders of such Notes, the whole amount then due and payable on such Notes for principal, premium, if any, interest on Additional Amounts, if any, and interest on any overdue principal, premium, if any, or Additional Amounts, if any*, and, to the extent that payment of such interest shall be legally enforceable, upon any overdue installment of interest, including Additional Interest, if any and overdue principal, at the rate borne by the Notes, and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

(Ex. A, §503) (emphasis added).

20. Pursuant to Section 501 of the Indenture, Events of Default, among other things, include the late payment of interest or principal and the failure to deliver the Letter of Credit:

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(1) default in the payment of any interest, including Additional Interest, if any, and Additional Amounts, if any, in respect of interest on any Note when it becomes due and payable and continuance of such default for a period of five Business Days; or

(2) default in the payment of the principal of or premium, if any, on any Note when it becomes due and payable at its stated maturity, or the failure to redeem Notes in the required principal amounts on any Mandatory Redemption Date; or . . .

(4) the failure to deliver to the Trustee, the LOC on or before January 6, 1999 as provided in the LOC and Deposit Agreement (unless the Deposit shall have been made on or before January 6, 1999), or the failure to make the Deposit into the Construction Funding Account on or before May 6, 1999 as provided in the LOC and Deposit Agreement (unless as a result of such failure the Trustee shall have the right to draw such amount under the LOC, in which case no Event of Default shall occur unless and until the drawing thereunder shall have been dishonored by the issuer of such LOC), each on the respective terms and conditions set out in the LOC and Deposit Agreement as in effect on the date hereof and the LOC; or . . .

(Ex. A, § 501).

21. Section 1009 of the Indenture requires the Defendant to provide the Trustee with a variety of financial statements

and reports. The Defendant is required to provide such financial statements to the Trustee regardless of whether the Defendant is subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended. (Ex. A, § 1009).

THE DEFENDANT DEFAULTS ON ITS PAYMENT OBLIGATIONS UNDER THE INDENTURE

22. The Defendant is currently in default under the Notes and under the Indenture. No LOC was delivered to the Trustee on or before January 6, 1999. The failure to deliver the LOC constitutes an Event of Default under Section 501(4) of the Indenture.

23. On January 11, 1999, an LOC in the amount of $4,460,000 was delivered to the Trustee. On February 12, 1999, the Defendant delivered to the Trustee a second LOC in the amount of $1,100,000, leaving a balance of $2,498,750, which remains outstanding.

24. On March 24, 1999, certain Holders, who hold more than 25% of the Notes, delivered to the Defendant a Declaration of Acceleration pursuant to Section 502 of the Indenture. This caused all amounts due under the Notes to become due and payable immediately on that date.

25. In the Declaration of Acceleration, the Holders further demanded "the immediate payment in full" of the Notes. Notwithstanding the foregoing, the Defendant has failed to pay any amounts on the Notes. Even in the absence of the acceleration, the Defendant failed to make the interest

payment on May 3, 1999, the first Business Day after the originally scheduled May 1, 1999 Interest Payment Date, and failed to make such interest payment for five business days thereafter. The failures to make such payments of principal and interest constitute additional Events of Default under Section 501(1) and (2) of the Indenture.

26. Pursuant to Section 2 of the LOC Agreement, Traffic Stream Holdings and Traffic Stream (China) each agreed to deposit into the Construction Funding Account (as defined in the Indenture) $8,058,750 on or before May 6, 1999, which amount may be reduced by any amount drawn under the LOC delivered to the Trustee.

27. No deposit was made on or before May 6, 1999, and the Trustee, therefore, drew the entire amount available under the two LOCs previously delivered to it. This left a balance of $2,498,750 which remains unpaid. The failure to make this deposit also constitutes an Event of Default under Section 501(4) of the Indenture.

28. By reason of the first Event of Default resulting from the failure to deliver the LOC in full by January 6, 1999, and the ensuing Declaration of Acceleration, the following amounts are now due and payable to the Trustee on behalf of the Holders:

(i) $119,000,000 aggregate principal amount of the Notes;

(ii) any Additional Amounts (as defined in the Indenture) payable on the Notes;

(iii) all accrued and unpaid interest on the Notes, including without limitation, on (a) the overdue $119,000,000 principal amount, (b) any Additional Amounts, and (c) to the extent legally enforceable, any overdue interest, in each case, at the rate borne by the Notes, plus Additional Interest (as defined in the Indenture), if any, to the date of payment;

(iv) all costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel;

(v) $2,498,750 which was due and payable on or before May 6, 1999, for deposit into the Construction Funding Account, pursuant to Section 2 of the LOC Agreement, plus interest thereon; and

(vi) any and all other amounts due under the Indenture or any of the Security Documents (as defined in the Indenture).

29. The Defendant has also failed to provide financial statements and reports to the Trustee as required by Section 1009 of the Indenture.

30. The Indenture provides that upon the occurrence of an Event of Default, the Trustee may institute judicial proceedings for collection of the sums due from the

Defendant, for specific performance of any agreement in the Indenture or Security Documents or to enforce any other proper remedy:

> If the [Defendant] fails to pay such amounts forthwith upon such demand, the Trustee, in its own name as trustee of an express trust, may institute a judicial proceeding for the collection of the sums so due and unpaid, may prosecute such proceeding to judgment or final decree, and may enforce the same against the [Defendant] or any other obligor upon the Notes and collect the moneys adjudged or decreed to be payable in the manner provided by law out of the property of the [Defendant] or any other obligor upon the Notes, wherever situated.
>
> If an Event of Default occurs and is continuing, the Trustee may in its discretion, proceed to protect and enforce its rights and the rights of the Holders by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any such rights, *whether for the specific enforcement of any covenant or agreement in this Indenture or the Security Documents or in aid of the exercise of any power granted herein or therein, or to enforce any other proper remedy.*

(Ex. A, § 503) (emphasis added).

31. The Defendant currently owes $10,558,623.80 in interest for the period of November 1, 1998 through

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May 31, 1999. Thus, the current amount of the Defendant's indebtedness is $129,558,623.80. Interest continues to accrue at a rate of $52,516.67 per day.

FIRST CAUSE OF ACTION
BREACH OF CONTRACT

32. The Trustee repeats and realleges the allegations contained in Paragraphs 1 through 31 as if fully set forth herein.

33. Def dant Traffic Stream has defaulted under the terms of the Indenture.

34. 25% of the Holders have demanded that Defendant pay the whole amount due and payable on the Notes and the Trustee has demanded delivery of the Letter of Credit, but Defendant has refused to do so.

35. Section 503 of the Indenture provides that upon the happening of an Event of Default, the Trustee may take recourse to whatever remedy it deems most effectual to enforce its rights and those of the Holders.

36. The Trustee hereby asserts its rights under N.Y. U.C.C. § 9-503 (McKinney 1990), including but not limited to, the Trustee's right to take possession of and dispose of all of the Collateral under the Indenture, for the purpose of satisfying, in whole or in part, the obligations owed to the Trustee and the Holders by Defendant Traffic Stream BVI under the Indenture.

37. The Trustee is also entitled to a deficiency judgment in an amount of at least $82,459,799.96 (plus interest from

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June 1, 1999 and thereafter and the fees and expenses of the Indenture Trustee), the amount by which Defendant Traffic Stream BVI's indebtedness exceeds the value of the Collateral.

SECOND CAUSE OF ACTION
REPLEVIN OF COLLATERAL

38. The Trustee repeats and realleges the allegations contained in Paragraphs 1 through 37 as if fully set forth herein.

39. By virtue of Defendant Traffic Stream BVI's Events of Default under the Indenture, the Trustee is entitled to possession of the Collateral under the common law doctrine of replevin.

THIRD CAUSE OF ACTION
BREACH OF CONTRACT
SPECIFIC ENFORCEMENT OF DEFENDANT'S REPORTING OBLIGATIONS

40. The Trustee repeats and realleges the allegations contained in Paragraphs 1 through 39 as if fully set forth herein.

41. The Defendant has failed to provide the financial statements and reports to the Trustee as required by Section 1009 of the Indenture.

42. The Defendant's failure to provide the required financial information has made it impossible for the Trustee and the Noteholders to evaluate the financial situation of Defendant. It also has prevented the Trustee from evaluating the amounts it may recover for the Noteholders apart from

the Collateral. There is no adequate remedy at law for Defendant's failure.

43. Section 1303 of the Indenture explicitly authorizes the Trustee to seek "specific enforcement of any covenant or agreement in [the] Indenture . . . ."

44. The Trustee thus seeks specific enforcement of Defendant's obligations to provide financial information to the Trustee.

FOURTH CAUSE OF ACTION ACCOUNTING

45. The Trustee repeats and realleges the allegations contained in Paragraphs 1 through 44 as if fully set forth herein.

46. Under the circumstances here presented, the Defendant, as issuer of the Notes, and upon information and belief, being insolvent, has a fiduciary relationship with the Holders. The Trustee has the authority to enforce the Holders' rights under the Indenture.

47. The Defendant is required to pay the full amounts of principal and interest on the Notes to the Holders. The Defendant has defaulted under the terms of the Indenture and failed to provide the Trustee with the financial information required by the Indenture. It therefore holds property that belongs to the Trustee and the Holders.

48. Because of the Defendant's failure to provide the required financial information to the Trustee, it is impossible to determine the full extent of its assets and what the Trustee and Holders can look to in order to satisfy the Defendant's debt.

49. Because no adequate legal remedy exists, the Court should enter an Order directing an accounting of the Defendant.

FIFTH CAUSE OF ACTION
RECOVERY OF COSTS OF COLLECTION

50. The Trustee repeats and realleges the allegations contained in Paragraphs 1 through 49 as if fully set forth herein.

51. The Indenture provides that the Defendant Traffic Stream BVI will pay the Trustee "such further amount as shall be sufficient to cover the costs and expenses of collection, including reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel." (Ex. A, § 503).

52. The Trustee has incurred and will continue to incur such expenses until such time as a judgment is entered in its favor or it otherwise fully enforces its rights under the Indenture.

WHEREFORE, the Trustee requests that judgment be granted and entered in its favor and an award be entered: as against Defendant Traffic Stream BVI (i) granting the Trustee possession of the Collateral; (ii) awarding the Trustee damages in an amount of $82,459,799.96, plus interest from June 1, 1999 at the rate of $52,516.67 per day, the amount representing the difference between the amount of Defendant's indebtedness and the amount of the Collateral; (iii) specifically enforcing the Defendant's reporting obligations under the Indenture; (iv) ordering an accounting; and (v) awarding the Trustee costs and expenses incurred in bringing this action, including attorneys' fees and such other and further relief as the Court deems just and proper.

Appendix C

DATED: June 3, 1999 Respectfully submitted,

KELLEY DRYE & WARREN LLP

By: s/ Sarah L. Reid
Sarah L. Reid, Esq.
Attorneys for Plaintiff
THE CHASE MANHATTAN
BANK, AS INDENTURE
TRUSTEE UNDER THE
INDENTURE,
DATED AS OF MAY 6, 1998

Appendix C

EXHIBIT A TO COMPLAINT — INDENTURE BETWEEN TRAFFIC STREAM (BVI) INFRASTRUCTURE LIMITED AND THE CHASE MANHATTAN BANK, AS TRUSTEE, DATED MAY 6, 1998

TRAFFIC STREAM (BVI)
INFRASTRUCTURE LIMITED

TO

THE CHASE MANHATTAN BANK,

as Trustee

and

CHASE MANHATTAN BANK LUXEMBOURG S.A.

as Paying Agent

Indenture

Dated as of May 6, 1998

US$119,000,000

14¼% Senior Secured Notes

due May 1, 2006

Appendix C

**TRAFFIC STREAM (CHINA)
INFRASTRUCTURE COMPANY LIMITED**

Reconciliation and tie between Trust Indenture Act of 1939 and Indenture, dated as of May 6, 1998

Trust Indenture Act Section	**Indenture Section**
§ 310(a)(1)	607
(a)(2)	607
(b)	608
§ 312(c)	701
§ 314(a)	703
(a)(4)	1008(a)
(c)(1)	102
(c)(2)	102
(e)	102
§ 315(b)	601
§ 316(a)(last sentence)	101 ("Outstanding")
(a)(1)(A)	502, 512
(a)(1)(B)	513
(b)	508
(c)	104(d)
§ 317(a)(1)	503
(a)(2)	504
(b)	1003
§ 318(a)	111

Note: This reconciliation and tie shall not, for any purpose, be deemed to be a part of the Indenture.

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INDENTURE, dated as of May 6, 1998 between TRAFFIC STREAM (BVI) INFRASTRUCTURE LIMITED, a corporation duly organized and existing under the laws of The British Virgin Islands (for purposes of this Indenture, the term "Company" refers only to Traffic Stream (BVI) Infrastructure Limited and does not include its Subsidiaries), having its principal office at P.O. Box 957, Offshore Corporations Centre, Road Town, Tortola, British Virgin Islands, and The Chase Manhattan Bank, a New York banking corporation organized and existing under the laws of the State of New York, as Trustee (herein called the "Trustee") and Chase Manhattan Bank Luxembourg S.A., as the Paying Agent in Luxembourg.

RECITALS OF THE COMPANY

The Company has duly authorized the creation of an issue of 14¼% Senior Secured Notes due 2006 (herein called the "Initial Notes"), and 14¼% Senior Secured Notes due 2006 (the "Exchange Notes" and together with the Initial Notes, the "Notes"), of substantially the tenor and amount hereinafter set forth, and to provide therefor the Company has duly authorized the execution and delivery of this Indenture.

Upon the issuance of the Exchange Notes, if any, or the effectiveness of the Shelf Registration Statement (as defined herein), this Indenture will be subject to the provisions of the Trust Indenture Act of 1939, as amended (the "TIA"), that are required to be part of this Indenture and shall, to the extent applicable, be governed by such provisions.

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All things necessary have been done to make the Notes, when executed by the Company and authenticated and delivered hereunder and duly issued by the Company, the valid obligations of the Company and to make this Indenture a valid agreement of the Company, in accordance with their and its terms.

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

For and in consideration of the premises and the purchase of the Notes by the Holders thereof, it is mutually covenanted and agreed, for the equal and proportionate benefit of all Holders of the Notes, as follows:

ARTICLE ONE

DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

SECTION 101. *Definitions.*

For all purposes of this Indenture, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms defined in this Article have the meanings assigned to them in this Article, and words in the singular include the plurals as well as the singular, and the words in the plural include the singular as well as the plural;

(b) all other terms used herein which are defined in the TIA, either directly or by reference therein, have the meanings assigned to them therein, and the terms "cash transaction"

and "self-liquidating paper", as used in TIA Section 311, shall have the meanings assigned to them in the rules of the Commission adopted under the TIA;

(c) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles, and, except as otherwise herein expressly provided, the term "generally accepted accounting principles" with respect to any computation required or permitted hereunder shall mean such accounting principles as are generally accepted at the date of such computation;

(d) the words "herein", "hereof" and "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision;

(e) the word "or" is not exclusive; and

(f) provisions of this Indenture apply to successive events and transactions.

"Act", when used with respect to any Holder, has the meaning specified in Section 104.

"Additional Amounts" has the meaning set forth in Section 1026.

"Additional Interest" means Special Interest and/or Penalty Interest, as applicable.

"Additional Joint Venture Capital Contribution" means the making of a capital contribution or shareholder loan to, or the purchase of Capital Stock of, a Hong Kong Holding Company by the Company, the proceeds of which transaction are used by the Hong Kong Holding Company to make a capital contribution or shareholder loan to or purchase Capital Stock of a Toll Road Joint Venture solely for the purpose of covering operating or management expenses, or unanticipated capital expenditures, of the Toll Road Joint Ventures, which expenses or expenditures are not otherwise obligated to be paid by the Chinese partner in such Toll Road Joint Venture.

"Affiliate" of any Person means (i) any other Person which, directly or indirectly, is in control of, is controlled by or is under common control with such Person or (ii) any other Person who is a commissioner, director or officer (A) of such Person, (B) of any Subsidiary of such Person or (C) of any Person described in clause (i) above. For purposes of this definition, "control" of a Person means the power, direct or indirect, to direct or cause the direction of the management and policies of such Person whether by contract or otherwise, and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Agent" means any Registrar, Paying Agent or Authenticating Agent.

"Agent Member" shall have the meaning specified in Section 306(a).

"Asset Disposition" in respect of the Company or any Subsidiary means any sale, conveyance, lease (including,

without limitation, any Sale/Leaseback Transaction), transfer or other disposition (in a single transaction or series of related transactions) of shares of Capital Stock of any Person other than the Company (other than directors' qualifying shares), property or other assets (each such action referred to for the purposes of this definition as a "disposition") by the Company or any Subsidiary, including any disposition by means of a merger, consolidation or similar transaction, other than (a) a disposition of property or assets (other than Collateral) by a Subsidiary to the Company or by the Company to a Wholly Owned Subsidiary or between or among Wholly Owned Subsidiaries, (b) any Permitted Investment, (c) any Restricted Payment that is made in conformity with Section 1011, (d) any disposition of property or assets by means of a merger or consolidation made in conformity with Section 801, or (e) any disposition of property or assets (other than Collateral) in the ordinary course of business.

"Assignment of Receivables" means the assignment of receivables dated as of the date hereof between the Company and the Collateral Agent.

"Attributable Indebtedness" in respect of a Sale/Leaseback Transaction means, at the time of determination, the greater of (i) the Fair Market Value of the property subject to the Sale/Leaseback Transaction (as determined in good faith by a majority of the Board of Directors of the Company) or (ii) the present value (discounted at the interest rate borne by the weighted average of all Notes Outstanding compounded annually) of the total obligations of the lessee for rental payments during the remaining term of the lease included in such Sale/Leaseback Transaction (including any period for which such lease has been extended).

"Authenticating Agent" means the Trustee or any Person authorized by the Trustee to act on behalf of the Trustee to authenticate Notes.

"Bankruptcy Law" means Title 11, United States Bankruptcy Code of 1978, as amended, or any similar United States federal or state law, or any similar law of any other jurisdiction, relating to bankruptcy, insolvency, receivership, winding-up, liquidation, reorganization or relief of debtors or any amendment to, succession to or change in any such law.

"Bermuda Share Swap" means the acquisition of the entire issued share capital of Traffic Stream (China) by the Holding Company in exchange for the issue and allotment of shares in the Holding Company so that existing shareholders of Traffic Stream (China) will become shareholders of the Holding Company.

"Board of Directors" means, with respect to any Person, the Board of Directors or similar governing body of such Person elected or appointed to manage the business of such Person or one or more Directors duly authorized to act on behalf of such Board of Directors.

"Board Resolution" means a copy of a resolution certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors and to be in full force and effect on the date of such certification, and delivered to the Trustee.

"Business Day" means each Monday, Tuesday, Wednesday, Thursday and Friday which is not a day on which banking

institutions in The City of New York or in Hong Kong Special Administrative Region of the People's Republic of China are authorized or obligated by law or executive order to close.

"Calculation Date" means the date which falls 45 days after each Determination Date.

"Capital Contribution" means the making of a shareholder loan, which loan constitutes Subordinated Indebtedness of the Company, or the purchase of Capital Stock of the Company, for the purposes contemplated by Section 1017.

"Capital Lease Obligation" means, with respect to any Person, any obligation that is required to be classified and accounted for as a capital lease on the face of a balance sheet of such Person prepared in accordance with GAAP. The amount of such obligation at any date shall be the capitalized amount thereof at such date, determined in accordance with GAAP, and the Stated Maturity thereof shall be the date of the last payment of rent or any other amount due under such lease prior to the first date upon which such lease may be terminated by the lessee without payment of a penalty.

"Capital Stock" of any Person means any and all shares, interests, rights to purchase or of conversion or exchange, warrants, options, participation or other equivalents of or interests in (however designated) capital stock of a corporation, including any Preferred Stock, or any and all equivalent equity ownership interests (including partnership and joint venture interests) in a Person other than a corporation.

"Cash Flow" means, with respect to any period, the excess of (A) the aggregate amount (without duplication) of dividends, distributions and payments of interest and principal on loans from the Company to any of its Subsidiaries, in each case, that are received by the Company or any Wholly Owned Subsidiary directly or indirectly from the Project Toll Road Joint Ventures and deposited into the Joint Venture Distribution Account during such period over (B) the aggregate expenses of the Company and its Wholly Owned Subsidiaries for such period (determined in each case in accordance with GAAP and without duplication and excluding in each case any expense of the Toll Road Joint Ventures) that have not been paid or reimbursed from management fees paid by the Holding Company.

"Certificated Notes" means those physical notes issued in exchange for Global Notes and which are payable to a Person other than the Depositary.

"Change of Control" means any time when (i) Mr. Ng Hon Leung, Chairman of the Board of Directors of the Company, and China National Nonferrous Metal Industry Corporation (together with its Affiliates) cease to have the power to vote, or the power to direct the vote, an aggregate of at least 51% of the Voting Stock of the Company, or (ii) Mr. Ng Hon Leung ceases to have the power to vote, or the power to direct the vote, at least 35% of the Voting Stock of the Company.

"CNMH" means China Nonferrous Metals Holdings (Hong Kong) Limited, a company organized under the laws of Hong Kong.

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"Collateral" means the collateral as described in Section 1301.

"Collateral Accounts" mean the Joint Venture Distribution Account, the Debt Service Reserve Account, the Construction Funding Accounts and the Note Redemption Account.

"Collateral Agent" means the Trustee acting as collateral agent under the Security Documents.

"Collateral Assignment Agreements" means the several Collateral Assignment Agreements between each of the four Hong Kong Holding Companies and the Collateral Agent, dated the date hereof.

"Commission" means the United States Securities and Exchange Commission.

"Company" means the Person named as the "Company" in the first paragraph of this Indenture, until a successor Person shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Company" shall mean such successor Person.

"Company Request" or "Company Order" means a written request or order signed in the name of the Company by its Board of Directors, any of its Directors or by its Chairman or Secretary, and delivered to the Trustee.

"Construction Funding Account" shall have the meaning specified in Section 1305.

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"Corporate Trust Office" means the office of the Trustee at which at any particular time its corporate trust business shall be principally administered, which office at the date of execution of this Indenture is located at 450 West 33rd Street, 15th Floor, New York, New York, 10001, attn.: Global Trust Services.

"Corporation" includes corporations, associations, companies and business trusts.

"Debt Service Coverage Ratio" means the ratio of (i) the sum of (a) Cash Flow of the Company for the last four full fiscal quarters ending on the most recent Determination Date (the "Measurement Period") *plus* (b) the amount in the Joint Venture Distribution Account at the beginning of the Measurement Period to (ii) Interest Expense and mandatory redemption payments for such Measurement Period.

"Debt Service Coverage Support Agreement" means the agreement dated as of the Issue Date among Traffic Stream (China), the Holding Company and the Company.

"Debt Service Reserve Account" shall have the meaning specified in Section 1304.

"Default" means any event which is, or after notice or passage of time or both would be, an Event of Default.

"Defaulted Interest" shall have the meaning specified in Section 309.

"Deposit" means the deposit of US$8,058,750 required to be deposited into the Construction Funding Account pursuant to the terms of the LOC and Deposit Agreement.

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"Depositary or "DTC" " means The Depositary Trust Company or such other depositary as may in the future replace DTC as depositary for the Notes.

"Determination Date" means the last day of each calendar year, with the first Determination Date being December 31, 1999.

"Dollar Permitted Investments" means investments which are denominated and payable in US dollars in any one or more of the following: (i) securities with maturities of one year or less from the date of acquisition that are (a) direct, interest-bearing obligations of the United States in certificated form; (b) direct, interest-bearing obligations of and guaranteed as to timely payment of principal and interest by, the United States, but only if such obligations are issued in the form of an entry made on the records of the Federal Reserve Bank of New York; and (c) direct, interest-bearing obligations of, and interest-bearing obligations guaranteed as to timely payment of principal and interest by, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation or the Student Loan Marketing Association, but only if (A) at the time of investment, such obligations are assigned the highest credit rating by the Rating Agencies and (B) such obligations have been deposited with The Depository Trust Company and its successors, or are issued in the form of an entry made on the records of the Federal Reserve Bank of New York; (ii) certificates of deposit with an original term to maturity of not more than 180 days issued by any depositary institution or trust company organized under the laws of the United States or any State thereof whose principal offices are located in the Borough of Manhattan,

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City and State of New York, New York (including the Trustee acting in its individual capacity), or demand or time deposits of such institution; *provided* that the short-term unsecured debt obligations of such depositary institution or trust company at the time of such investment are assigned a rating of "A-1" by S&P and "P-1" by Moody's or the long-term unsecured debt obligations of such depositary institution or trust company at the time of such investment are assigned a rating of "BBB" or higher by S&P and "Baa" or higher by Moody's; (iii) repurchase obligations pursuant to a written agreement (a) with respect to any obligation described in clause (i) above, where (in each case) the Trustee has taken delivery of such obligation and (b) by a U.S. depositary institution or trust company whose principal offices are located in the Borough of Manhattan, City and State of New York, New York, the short-term unsecured debt obligations of which are rated "A-1" by S&P and "P-1" by Moody's at the time of such investment or the long-term unsecured debt obligations of which are rated "BBB" or higher by S&P and "Baa" or higher by Moody's (including, if applicable, the Trustee acting in its individual capacity) at the time of such investment; (iv) commercial paper that (a) is assigned a rating of "A-1" by S&P and "P-1" by Moody's at the time of such investment and (b) had an original term to maturity of not more than 180 days; (v) separate account portfolios managed by a professional money manager which have average portfolio duration of no longer than six months, invest in securities with maximum average maturities of no longer than two years for fixed rate securities and three years for floating rate securities, and are restricted to investing in securities rated "A2/P2" (or equivalent) or better by S&P or Moody's for short-term securities and "A-" or better or equivalent for

long term securities. Notwithstanding the foregoing, the maturity of any investment referred to in clauses (i) through (v) made with funds from the Debt Service Reserve Account, the Construction Funding Account, the Joint Venture Distribution Account or Note Redemption Account shall be no later than a date which is at least 25 Business Days prior to the Stated Maturity of the Notes.

"Event of Default" shall have the meaning specified in Section 501.

"Excess Project Construction Funds" means the amount of funds remaining in the Construction Funding Account after the Company has delivered to the Trustee an Officer's Certificate certifying that both Toll Roads Under Development are fully operational and collecting tolls at all toll stations.

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"Exchange Date" shall have the meaning specified in the Registration Rights Agreement.

"Exchange Notes" has the meaning stated in the first recital of this Indenture and refers to any Exchange Notes containing terms substantially identical to the Initial Notes (except that such Exchange Notes shall not contain terms with respect to transfer restrictions and certain provisions relating to an increase in the stated rate of interest) that are issued and exchanged for the Initial Notes pursuant to the Registration Rights Agreement and this Indenture.

"Exchange Offer" means the exchange offer that may be effected pursuant to the Registration Rights Agreement.

"Exchange Rate" means the noon buying rate in New York City, New York for cable transfers payable in Renminbi as certified for customs purposes by the Federal Reserve Bank of New York.

"Exchange Offer Registration Statement" means the Exchange Offer Registration Statement as defined in the Registration Rights Agreement.

"Exchange Rate Contract" means, with respect to any Person, any currency swap agreement, forward exchange rate agreement, foreign currency futures or option, exchange rate collar agreement, exchange rate insurance or other agreement, instrument or arrangement or combination thereof entered into in the ordinary course of such Person's business and designed to provide protection for such Person against fluctuations in currency exchange rates.

"Fair Market Value" means, with respect to any property or asset, the price which could be negotiated in an arm's-length free-market transaction, for cash, between a willing seller and a willing buyer, neither of which is under pressure or compulsion to complete the transaction.

"GAAP" or "Generally Accepted Accounting Principles" means generally accepted accounting principles in Hong Kong which are in effect on the date of determination.

"Global Notes" means the Rule 144A Global Notes and the Regulation S Global Notes and, after the Exchange Date, any Note in global form.

"Guarantee" means any obligation, contingent or otherwise, of any Person directly or indirectly guaranteeing any Indebtedness or other obligation of any Person and any obligation, direct or indirect, contingent or otherwise, of such Person (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation of such Person (whether arising by virtue of partnership arrangements, or by agreement to keep-well, to purchase assets, goods, securities or services to take-or-pay, or to maintain financial statement conditions or otherwise) or (ii) entered into for purposes of assuring in any other manner an obligee of such Indebtedness or other obligation of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part). The term "guarantee" used as a verb has a corresponding meaning.

"Holder" means, as of any date of determination (including any record date provided hereunder or fixed pursuant hereto), a Person in whose name a Note is registered in the Note Register at such date of determination.

"Holding Company" means Traffic Stream Infrastructure Holdings Company Limited, a company organized under the law of Bermuda.

"Hong Kong Holding Companies" mean South-East Asia (China) Infrastructure Limited, South-East Asia Strategy Limited, South-East Asia Shao Fu Development Company Limited and Traffic Stream Infrastructure Company Limited.

"Income Tax Expense" means for any period the calculated provision for income taxes of the Company in accordance with

GAAP on a parent company only basis (unconsolidated) together with the provision for income taxes of each of its Subsidiaries, if any, for the same period similarly calculated.

"Incur" means, with respect to any Indebtedness or other obligation of any Person, to create, issue, incur (by conversion, exchange or otherwise), assume, guarantee or otherwise become liable in respect of such Indebtedness or other obligation or the recording, as required pursuant to GAAP or otherwise, of any such Indebtedness or other obligation on the balance sheet of such Person (and "Incurrence", "Incurred", "Incurrable" and "Incurring" shall have meanings correlative to the foregoing); *provided* that (A) any Indebtedness of a Person existing at the time such Person becomes (after the Issue Date) a Subsidiary (whether by merger, consolidation, acquisition or otherwise) of the Company shall be deemed to be incurred by such Subsidiary at the time it becomes a Subsidiary and (B) any amendment, modification or waiver of any document pursuant to which Indebtedness was previously incurred shall be deemed to be an incurrence of Indebtedness unless such amendment, modification or waiver does not increase the principal or premium thereof or interest rate thereon (including by way of original issue discount).

"Indebtedness" means, with respect to any Person, without duplication, (a) all indebtedness of such Person for borrowed money or for the deferred purchase price of property or services (excluding accounts payable and other accrued current liabilities incurred in the ordinary course of business); (b) all other obligations evidenced by a note, bond, debenture or other similar security or Issued under an indenture or other similar agreement; (c) all Capital Lease

Obligations of such Person and any Attributable Indebtedness of such Person; (d) all obligations created or arising under a conditional sale or other title retention agreement with respect to property acquired by such Person (even if the rights and remedies of the seller or lender in the event of default are limited to repossession or sale of the property), but excluding accounts payable and other accrued current liabilities incurred in the ordinary course of business; (e) the full amount of any outstanding letters of credit Issued for the account of such Person; (f) all obligations (in addition to those set forth above) secured by any Lien on any property owned by such Person; (g) any contingent liability of such Person, including guarantees by such Person, in respect of obligations or other liabilities of other Persons of the nature described in the foregoing clauses (a) through (f); (h) all mandatorily redeemable Preferred Stock of such Person valued at the redemption price; (i) all Preferred Stock Issued by any Subsidiary of such Person other than to such Person or a Wholly Owned Subsidiary of such Person, valued at the higher of any mandatory redemption price and the liquidation preference; (j) all principal payment obligations under Interest Rate Contracts of such Person; and (k) any amendment, supplement, modification, deferral, renewal, extension, refunding or restructuring of any liability of the type described in the foregoing clauses (a) through (j) (other than any amendment, supplement, modification, deferral, renewal, extension, refunding, or refinancing as a result of which the related liability would not be treated as Indebtedness).

"Indenture" means this instrument as originally executed and as it may from time to time be supplemented or amended

by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof.

"Independent Appraiser" means an internationally recognized appraisal, accounting, investment banking or other firm (which may include the independent registered public accountants of the Company), as appropriate, that (i) is in fact independent in respect of the transaction in question; (ii) is an expert in respect of the relevant valuation or appraisal activity; (iii) does not have any direct financial interest or any material indirect financial interest in the Company or any Subsidiary, the Trustee, the Collateral Agent or in any Affiliate of any of them; and (iv) is not connected with the Company or a Subsidiary, the Trustee, the Collateral Agent or any such Affiliate as a director, officer, employee or Affiliate.

"Initial Notes" has the meaning stated in the first recital of this Indenture.

"Interest Expense" means, for any period, the provision for gross interest expense included in a financial statement prepared in accordance with GAAP (including any amortization of debt discount and debt issuance cost, the interest portion of deferred payment obligations and commissions, discounts and interest with respect to letters of credit but excluding capitalized interest) of the Company and its Subsidiaries for such period, including, without limitation or duplication, (i) the portion of rental obligations (whether or not treated as Capital Lease Obligations) allocable to interest expense in accordance with GAAP; (ii) net fees incurred by the Company or any of its Subsidiaries

with respect to interest rate swap or similar agreements or foreign currency hedge, exchange or similar agreements; and (iii) Preferred Stock and Redeemable Stock dividends declared and payable in cash in respect of Preferred Stock or Redeemable Stock of any Subsidiary held by Persons other than the Company or any of its Wholly Owned Subsidiaries; *provided, however,* that Interest Expense attributable to interest on any Indebtedness bearing a floating interest rate shall be computed on a pro forma basis as if the rate in effect on the date of computation had been the applicable rate for the entire period.

"Interest Payment Date" means May 1 and November 1 of each year, commencing November 1, 1998.

"Interest Rate Agreement" means any interest rate protection agreements and other types of interest rate hedging agreements (including, without limitation, interest rate swaps, caps, floors, collars and similar agreements) designed to protect the Company or any Subsidiary against fluctuations in interest rates in respect of Indebtedness of the Company or any Subsidiary.

"Investment" in any Person means any direct or indirect advance, loan or other extension of credit (including by way of guarantee or similar arrangement) or capital contribution to (by means of any transfer of cash or other property to others or any payment for property or services for the account or use of others), or any purchase or acquisition of Capital Stock, Indebtedness or other similar instruments Issued by such Person.

"Issue" means issue, assume, guarantee, incur or otherwise become liable for; *provided, however,* that any

Indebtedness or Capital Stock of a Person existing at the time such Person becomes a Subsidiary (whether by merger, consolidation, acquisition or otherwise) shall be deemed to be Issued by such Subsidiary at the time it becomes a Subsidiary.

"Issue Date" means the date on which the Notes are originally Issued.

"Joint Venture Contracts" means the following contracts:

(a) the joint venture contract dated October 16, 1996 between Shandong Traffic Development and Investment Company and South-East Asia Strategy Limited for the formation of Shandong Yulin Toll Road Co., Ltd. (for the development of the Yantai-Ninghai section of the Yanwei Highway);

(b) the joint venture contract dated October 16, 1996 between Shandong Traffic Development and Investment Company and South-East Asia (China) Infrastructure Limited for the formation of Shandong Longquan Toll Road Co., Ltd. (for the development of the Ninghai-Weihai section of the Yanwei Highway);

(c) the joint venture contract dated October 16, 1996 between Shandong Traffic Development and Investment Company and Traffic Stream Infrastructure Company Limited for the formation of Shandong Malong Expressway Co., Ltd. (for the development of the Yantai-Zhengezhuang Interchange Bridge section of the Yanwei Expressway);

(d) the joint venture contract dated October 16, 1996 between Shandong Traffic Development and Investment

Company and Traffic Stream Infrastructure Company Limited for the formation of Shandong Xinan Expressway Co., Ltd. (for the development of the Zhengezhuang Interchange Bridge-Xinan River Bridge section of the Yanwei Expressway);

(e) the joint venture contract dated October 16, 1996 between Shandong Traffic Development and Investment Company and South-East Asia Strategy Limited for the formation of Shandong Qinshui Expressway Co., Ltd. (for the development of the Xinan River Bridge-Qinshui River Bridge section of the Yanwei Expressway);

(f) the joint venture contract dated October 16, 1996 between Shandong Traffic Development and Investment Company and South-East Asia Shao Fu Development Company Limited for the formation of Shandong Jinshan Expressway Co., Ltd. (for the development of the Qinshui River Bridge-Jiuguan Interchange Bridge section of the Yanwei Expressway);

(g) the joint venture contract dated October 16, 1996 between Shandong Traffic Development and Investment Company and South-East Asia Shao Fu Development Company Limited for the formation of Shandong Chucun Expressway Co., Ltd. (for the development of the Jiuguan Interchange Bridge-Shuangdao Bridge section of the Yanwei Expressway);

(h) the joint venture contract dated October 16, 1996 between Shandong Traffic Development and Investment Company and South-East Asia (China) Infrastructure Limited for the formation of Shandong Shuangdao Expressway Co.,

Ltd. (for the development of the Shuangdao Bridge-Weihai section of the Yanwei Expressway);

(i) the joint venture contract dated January 8, 1996 between Guangdong Kaiping City Highway Industrial Development Company and South East Asia Estate Investment and Development Co. for the formation of Kaiping City Highway Development Co. Ltd. (for the development of the Shuikou-Chikan section of the Guangzhan Highway);

(j) the joint venture contract dated January 18, 1996 between Guangdong Kaiping City Highway Industrial Development Company and South East Asia Estate Investment and Development Co. for the formation of Kaiping City Communications Development Co. Ltd. (for the development of the Chikan-Puqiao section of the Guangzhan Highway);

(k) the joint venture contract dated January 30, 1996 between Guangdong Shaoguan City Nanjiao Highway Development Center and South East Asia Estate Investment and Development Co. for the formation of Shaoguan City Shaonan Highway Company Limited (for the development of the Shiliting-Shaoguan Smelter section of the Shaonan Highway);

(l) the joint venture contract dated March 14, 1997 among Guangdong Road and Bridge Construction and Development Company, South-East Asia (China) Infrastructure Limited and Guangdong Baolihua Industrial Stock Company Limited for the formation of Guangdong Yuejia Expressway Company Limited (for the development

of the Meinan-Yujiang and Jingyi-Beidou sections of the Meishan Expressway); and

(m) the joint venture contract dated February 13, 1997 between Guangdong Wengyuan Highway Construction Enterprise Company Limited and South-East Asia Strategy Limited for the formation of Guangdong Wengyuan County Guanlong Highway Company Limited (for the development of the Guandu-Wengyuan section of the Guanlong Highway);

in each case as supplemented and amended through the date hereof.

"Joint Venture Distribution Account" shall have the meaning specified in Section 1306.

"Lien" means, with respect to any property or assets, any mortgage or deed of trust, pledge, hypothecation, assignment, deposit agreement, security interest, lien, charge, easement, encumbrance, preference, priority or other similar agreement or rights of others on or with respect to such property or assets (including, without limitation, any conditional sale or other title retention agreement having substantially the same economic effect as any of the foregoing and any power of attorney or similar power given to any Person for the purpose of establishing any such right in the future).

"LOC" means the letter of credit in the amount of US$8,058,750 to be delivered to the Trustee pursuant to the terms of the LOC and Deposit Agreement.

"LOC and Deposit Agreement" means the Letter of Credit Procurement and Deposit Agreement dated as of the

date hereof among the Holding Company, Traffic Stream (China), Mr. Ng Hon Leung, CNMH and the Company.

"Management Services Agreement" means the Management Services Agreement dated as of November 17, 1997 between the Holding Company and Drew Services Limited, as supplemented and amended on April 18, 1998.

"Mandatory Redemption Date" shall have the meaning specified in Section 1307.

"Maturity", when used with respect to any Note, means the date on which the principal of such Note or an installment of principal becomes due and payable as therein or herein provided, whether at the Stated Maturity or by declaration of acceleration, notice of redemption or otherwise.

"Moody's" means Moody's Investors Services, Inc.

"Mortgage of Shares" means the Mortgage of Shares dated as of the Issue Date between the Company and the Collateral Agent.

"Non-Project Spin-off Date" means the first date by which the Company has caused the Hong Kong Holding Companies to transfer their interests in the Non-Project Toll Road Joint Ventures in compliance with applicable law to a Person that is not controlled, directly or indirectly, by the Company.

"Non-Project Toll Road Joint Ventures" means the Guangdong Maozhan Expressway Co. Ltd., and the Hainan Huaizhui Bridge Company Limited.

"Non-Registration Opinion and Supporting Evidence" means an Opinion of Counsel to the effect that, and such other certification or information as the Company may reasonably require to confirm that, a proposed transfer of Notes is being made pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act.

"Note Redemption Account" shall have the meaning specified in Section 1307.

"Note Registrar" shall have the meaning specified in Section 305.

"Note Register" shall have the meaning specified in Section 305.

"Notes" has the meaning stated in the first recital of this Indenture and more particularly means any Notes authenticated and delivered under this Indenture.

"Officer's Certificate" means a certificate signed by two authorized officers of the Company, one of whom must be the Chairman or the Secretary of the Company.

"Opinion of Counsel" means a written opinion of counsel, who may be counsel for the Company, including an employee of the Company, and who shall be reasonably acceptable to the Trustee.

"Outstanding", when used with reference to the Notes, shall mean, as of any date of determination, all Notes theretofore authenticated and delivered under this Indenture, except

(a) Notes theretofore canceled by the Trustee or delivered to the Trustee for cancellation;

(b) Notes which have been paid, or Notes in substitution for which other Notes shall have been authenticated and delivered pursuant to the terms of Section 303 (unless proof satisfactory to the Trustee is presented that any of such Notes is held by a Person in whose hands such Note is a legal, valid and binding obligation of the Company); and

(c) Notes, or portions thereof for which payment or redemption money in the necessary amount has been theretofore deposited with the Trustee or any Paying Agent (other than the Company) in trust or set aside and segregated in trust by the Company (if the Company shall act as its own Paying Agent) for the Holders of such Notes, *provided* that, if such Notes are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee has been made;

provided, however, that in determining whether the Holders of the requisite principal amount of Outstanding Notes have given any request, demand, authorization, direction, consent, notice or waiver hereunder, and for the purpose of making the calculations required by TIA Section 313, Notes owned by the Company or any other obligor upon the Notes or any Affiliate of the Company or such other obligor shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Trustee shall be protected in making such calculation or in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Notes which the Trustee knows to be so owned shall be

so disregarded. Notes so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Notes and that the pledgee is not the Company or any other obligor upon the Notes or any Affiliate of the Company or such other obligor.

"Paying Agent" means any Person (including the Company acting as Paying Agent) authorized by the Company to pay the principal of (and premium, if any) or interest on any Notes on behalf of the Company.

"Penalty Interest" shall have the meaning specified in Exhibit A hereto.

"Permitted Investments" means (i) any Investment by the Company in any Wholly Owned Subsidiary; (ii) any Investment by the Company in another Person if as a result of such Investment such other Person is merged or consolidated with or into, or transfers or conveys all or substantially all its assets to, the Company; (iii) any Investment in the Company by any Subsidiary; and (iv) Dollar Permitted Investments.

"Permitted Liens" means with respect to any Person:

(a) pledges or deposits made by such Person under workers' compensation, unemployment insurance laws or similar legislation, or good faith deposits in connection with bids, tenders, contracts (other than for payment of Indebtedness) or leases to which such Person is a party, or deposits to secure statutory or regulatory obligations of

such Person or deposits of cash or U.S. Government Obligations to secure surety, appeal or performance bonds to which such Person is a party, or deposits as security for contested taxes or import duties or for the payment of rent, in each case Incurred in the ordinary course of business;

(b) Liens imposed by law such as carriers', warehousemen's and mechanics' Liens, in each case, arising in the ordinary course of business and with respect to amounts not yet due or being contested in good faith by appropriate legal proceedings promptly instituted and diligently conducted and of which a reserve or other appropriate provision, if any, as shall be required in conformity with GAAP shall have been made; or other Liens arising out of judgments or awards against such Person with respect to which such Person shall then be diligently prosecuting appeal or other proceedings for review;

(c) Liens for property taxes not yet subject to penalties for non-payment or which are being contested in good faith and for which appropriate provision, as shall be required in conformity with GAAP, if any, shall have been made;

(d) minor survey exceptions, minor encumbrances, easements or reservations of, or rights of others for, rights of way, electric lines, telegraph and telephone lines and other similar purposes, or zoning or other restrictions as to the use of real properties or liens incidental to the conduct of the business of such Person or to the ownership of its properties which were not Incurred in connection with Indebtedness or other extensions of credit and which do not in the aggregate materially adversely affect the value of said properties or

materially impair their use in the operation of the business of such Person;

(e) Liens existing on the Issue Date;

(f) Liens securing Indebtedness or other obligations of a Subsidiary owing to the Company or a Wholly Owned Subsidiary of the Company;

(g) Liens not in respect of Indebtedness consisting of the interest of the lessor under any lease Incurred in the ordinary course of business and not otherwise prohibited by this Indenture;

(h) Liens which constitute banker's liens, rights of set-off or similar rights and remedies as to deposit accounts or other funds maintained with any bank or other financial institution, whether arising by operation of law or pursuant to contract;

(i) Liens Incurred pursuant to this Indenture and the Security Documents; and

(j) Liens to secure any refinancing, refunding, extension, renewal or replacement (or successive refinances, refunds, extensions, renewals or replacements) as a whole, or in part, of any Indebtedness secured by any Lien referred to in the foregoing clause (e), *provided, however,* that (x) such new Lien shall be limited to all or part of the same property that secured the original Lien (plus improvements on such property) and (y) the Indebtedness secured by such Lien at such time is not increased (other than by an amount necessary

to pay fees and expenses, including premiums, related to the refinancing, refunding, extension, renewal or replacement or such Indebtedness).

"Person" means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

"Predecessor Note" of any particular Note means every previous Note evidencing all or a portion of the same debt as that evidenced by such particular Note; and, for the purposes of this definition, any Note authenticated and delivered under Section 308 in exchange for a mutilated security or in lieu of a lost, destroyed or stolen Note shall be deemed to evidence the same debt as the mutilated, lost, destroyed or stolen Note.

"Preferred Stock", as applied to the Capital Stock of any corporation, means Capital Stock or any class or classes (however designated) whether now outstanding or Issued after the Issue Date which is preferred as to the payment of dividends, or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such corporation, over shares of Capital Stock of any other class of such corporation.

"Private Placement Legend" has the meaning set forth in Section 202.

"Project Toll Road Joint Ventures" means Shaoguan Shaonan Highway Company Limited; Shandong Longquan Toll Road Co. Ltd.; Shandong Shuangdao Expressway Co. Ltd.;

Kaiping Communications Development Co. Ltd.; Kaiping Highway Development Co. Ltd.; Guangdong Yuejia Expressway Limited; Shandong Yulin Toll Road Co. Ltd.; Shandong Qinshui Expressway Co. Ltd.; Guan Long Expressway Company Limited; Shandong Chucun Expressway Co. Ltd.; Shandong Jinshan Expressway Co. Ltd.; Shandong Malong Expressway Co. Ltd. and Shandong Xinan Expressway Co. Ltd.

"Purchase Money Indebtedness" of any Person means all obligations of such Person (i) consisting of the deferred purchase price of property, conditional sale obligations, obligations under any title retention agreement (but excluding accounts payable arising in the ordinary course of business) and other purchase money obligations, in each case where the maturity of such obligation does not exceed the anticipated useful life of the asset being financed and (ii) incurred to finance the acquisition of such asset, including additions and improvements.

"QIB" means a "Qualified Institutional Buyer" under Rule 144A.

"Rating Agency" means (i) S&P, (ii) Moody's or (iii) if neither S&P nor Moody's shall make a rating of the Notes publicly available, a nationally recognized statistical rating organization or organizations (as defined under the Exchange Act) selected by the Company which shall be substituted for S&P or Moody's making its rating of the Notes publicly available.

"Rating Confirmation" means, with respect to the Notes, a reconfirmation in writing by a Rating Agency that its rating

of such series of Notes as of the date of such reconfirmation is at least as favorable as its rating of such series of Notes in effect on the Issue Date of the Notes.

"Redeemable Stock" means any Capital Stock that by its terms or otherwise is required to be redeemed on or prior to the Stated Maturity of the Notes or is redeemable at the option of the holder thereof at any time prior to the Stated Maturity of the Notes.

"Redemption Date", when used with respect to any Note to be redeemed, in whole or in part, means the date fixed for such redemption by or pursuant to this Indenture.

"Redemption Price", when used with respect to any Note to be redeemed, means the price at which it is to be redeemed pursuant to this Indenture.

"Refinance" means, in respect of any Indebtedness or Preferred Stock, to refinance, extend, renew, refund, amend, repay, prepay, redeem, decease or retire, or to Issue Indebtedness or Preferred Stock in exchange or replacement for, such Indebtedness or Preferred Stock. "Refinanced" and "Refinancing" shall have correlative meanings.

"Registration Rights Agreement" means the registration rights agreement dated the date hereof between the Company and Merrill Lynch, Pierce, Fenner & Smith Incorporated.

"Registrar" shall mean the The Chase Manhattan Bank and any successor registrar.

"Regular Record Date" for the interest payable on any Interest Payment Date means the April 15 or October 15 (whether or not a Business Day), as the case may be, next preceding such Interest Payment Date.

"Regulation S" means Regulation S under the Securities Act.

"Regulation S Certificate" means a certificate substantially in the form set forth in Exhibit C hereto.

"Regulation S Global Note" means the permanent global Note in definitive, fully registered book-entry form without interest coupons representing the Notes offered and sold in reliance on Regulation S.

"Renminbi" means the lawful currency of the People's Republic of China.

"Responsible Officer", when used with respect to the Trustee, means any vice president, any assistant secretary, any assistant treasurer, any trust officer or assistant trust officer employed by or assigned to the Corporate Trust Office of the Trustee, or any other officer of the Trustee customarily performing functions similar to those performed by any of the above-designated officers, and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of his knowledge of and familiarity with the particular subject.

"Restricted Payment" means, with respect to any Person, (i) any declaration or payment of any dividend on, or distribution to the holders of, any shares of Capital Stock

of such Person or any Subsidiary of such Person; (ii) any purchase, redemption or other acquisition or retirement for consideration of any share of Capital Stock (other than Redeemable Stock) of such Person or any Subsidiary of such Person or any option, warrant or other right to acquire Capital Stock of such Person or any Subsidiary of such Person; (iii) any prepayment, purchase, redemption or other acquisition or retirement for consideration of any Subordinated Indebtedness of such Person prior to a scheduled mandatory sinking fund payment day or maturity date thereof; (iv) any incurrence, creation or assumption of any guarantee of Indebtedness of any Affiliate of such Person (other than Permitted Investments); or (v) any Investment in any Person (other than Permitted Investments).

"Restricted Subsidiary" means any of the Project Toll Road Joint Ventures and any of the Hong Kong Holding Companies.

"Rule 144A Information" shall have the meaning specified in Section 1009(c).

"Rule 144A Certificate" means a certificate substantially in the form set forth in Exhibit B hereto.

"Rule 144A Global Note" means the permanent global Note in definitive, fully registered book-entry form without interest coupons representing the Notes offered and sold in reliance on Rule 144A under the Securities Act.

"S&P" means Standard and Poor's Rating Services.

"Sale/Leaseback Transaction" means any arrangement with any Person pursuant to which property is sold or

transferred by such Person and such property or substantially identical property is, in a substantially contemporaneous transaction, leased back from the purchaser or transferee thereof by such Person or one of its Subsidiaries.

"Security Documents" means, collectively, the Mortgage of Shares, the Assignment of Receivables, the Service Fee Pledge Agreement and the Collateral Assignment Agreements.

"Senior Indebtedness" means, at any time, any outstanding Indebtedness of the Company that is *pari passu* in right of payment with the Notes.

"Service Fee Pledge Agreement" means the Service Fee Pledge Agreement dated as of the date hereof between Drew Services Limited and the Collateral Agent.

"Special Interest" shall have the meaning specified in Exhibit A hereto.

"Special Record Date" for the payment of any Defaulted Interest means a date fixed by the Trustee pursuant to Section 309.

"Stated Maturity" means, with respect to any Indebtedness, the date specified in respect of such Indebtedness as the fixed date on which the principal of such Indebtedness is due and payable, including pursuant to any mandatory redemption provision (but excluding any provision providing for the repurchase of such Indebtedness at the option of the holder thereof upon the happening of any contingency unless such contingency has occurred).

"Subordinated Indebtedness" means Indebtedness of the Company the principal of and any premium and interest on which is by its terms subordinated in right of payment to the principal of and premium, if any, and interest, including Additional Interest, if any, on the Notes.

"Subsidiary" means, with respect to any Person, any corporation, association, partnership, joint venture or other business entity, of which more than 50% of the total voting power of shares of Capital Stock or other interests (including partnership interests) entitled (without regard to the occurrence of any contingency) to vote in the election of commissioners, directors, managers, trustees or similar officials thereof is at the time owned or controlled, directly or indirectly, by (i) such Person, (ii) such Person and one or more Subsidiaries, or (iii) one or more Subsidiaries. For the avoidance of doubt, with respect to the Company, "Subsidiary" also means each of the Project Toll Road Joint Ventures and, until such time as a Non-Project Toll Road Joint Venture is transferred in accordance with Section 1023, such Non-Project Toll Road Joint Venture.

"Toll Road Joint Ventures" means each of the Project Toll Road Joint Ventures and the Non-Project Toll Road Joint Ventures.

"Toll Roads Under Development" means (i) the Guanlong Highway, a 32.1 kilometer toll road located in Guangdong Province and which, as of the date hereof, is owned and to be operated by the Guan Long Highway Company Limited, and (ii) the Meishan Expressway, a 28.7 kilometer toll road in Guangdong Province and which, as of the date hereof, is owned and to be operated by Guangdong Yuejia Expressway Limited.

"Traffic Stream (China)" means Traffic Stream (China) Infrastructure Company Limited, a company organized under the law of the British Virgin Islands.

"Trust Indenture Act" or "TIA" means the Trust Indenture Act of 1939 as in force at the date as of which this Indenture was executed, except as provided in Section 905.

"Trustee" means the Person named as the "Trustee" in the first paragraph of this Indenture until a successor Trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Trustee" shall mean such successor Trustee.

"U.S. Dollar" means the lawful currency of the United States of America.

"U.S. GAAP" means generally accepted accounting principles, consistently applied, that are set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as may be approved by a significant segment of the accounting profession in the United States of America.

"US Government Obligations" means direct obligations (or certificates representing an ownership interest in such obligations) of the United States of America (including any agency or instrumentality thereof) for the payment of which the full faith and credit of the United States of America is pledged.

"Voting Stock" of a corporation or other entity means all classes of Capital Stock of such corporation or other entity then outstanding and normally entitled to vote in the election of commissioners or directors, or in the election of Persons substantially performing the functions of directors of a U.S. corporation, or in the appointment of a general partner or other managing authority.

"Wholly Owned Subsidiary" means, with respect to any Person, a Subsidiary all the Capital Stock of which (other than directors' qualifying shares) is owned or controlled by such Person or another Wholly Owned Subsidiary.

"Yanwei Highway" means the 88-kilometer toll road located in Shandong Province which, as of the date hereof, is owned and operated by Shandong Longquan Toll Road Co., Ltd. and Shandong Yulin Toll Road Co. Ltd.

"1999 Devaluation" means a reduction by 5% or more as between (i) the average Exchange Rates in effect on the last Business Day of each month in 1999 and (ii) the Exchange Rate in effect on the first Business Day in 2000.

"2000 Devaluation" means a reduction by 5% or more as between (i) the average Exchange Rates in effect on the last Business Day of each month in 2000 and (ii) the Exchange Rate in effect on the first Business Day in 2001.

SECTION 102. *Compliance Certificates and Opinions.*

Upon any application or request by the Company to the Trustee to take any action under any provision of this

Indenture, the Company shall furnish to the Trustee an Officer's Certificate in form reasonably acceptable to the Trustee stating that all conditions precedent, if any, provided for in this Indenture (including any covenant compliance with which constitutes a condition precedent) relating to the proposed action have been complied with and, if expressly required by the terms hereof, an Opinion of Counsel stating that in the opinion of such counsel all such conditions precedent, if any, have been complied with, except that in the case of any such application or request as to which the furnishing of such documents is specifically required by any provision of this Indenture relating to such particular application or request, no additional certificate or opinion need be furnished.

Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture (other than pursuant to Section 1008(a)) shall include:

(1) a statement that each individual signing such certificate or opinion has read such covenant or condition and the definitions herein relating thereto;

(2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(3) a statement that, in the opinion of each such individual, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(4) a statement as to whether, in the opinion of each such individual, such condition or covenant has been complied with.

SECTION 103. *Form of Documents Delivered to Trustee.*

In any case where several matters are required to be certified by any specified Person, it is not necessary that all such matters be certified by only one such Person, or that they be so certified by only one document, but one such Person may certify with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify as to such matters in one or several documents.

Any certificate of an officer of the Company may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless such officer knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to the matters upon which the certificate of such officer is based are erroneous. Any Opinion of Counsel delivered to the Trustee in connection with this Indenture may be based, insofar as it relates to factual matters, upon a certificate or representations by, an officer or officers of the Company stating that the information with respect to such factual matters is in the possession of the Company, unless such counsel knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to such matters are erroneous.

Where any Person is required to make, give or execute two or more applications, requests, consents, certificates,

statements, opinions or other instruments under this Indenture, they may, but need not, be consolidated and form one instrument.

All notices, reports, certificates and communications hereunder shall be made in the English language or shall be accompanied by a certified English translation thereof. Any certified English translation delivered hereunder shall be a true and accurate translation by a professionally qualified translator or by some other person qualified to do so.

SECTION 104. *Acts of Holders*.

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by agents duly appointed in writing; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee and, where it is hereby expressly required, to the Company. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section 104.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit

of a witness of such execution or by a certificate of a notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him the execution thereof. Where such execution is by a signer acting in a capacity other than his individual capacity, such certificate or affidavit shall also constitute sufficient proof of authority. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner that the Trustee deems sufficient.

(c) The principal amount and serial numbers of Notes held by any Person, and the date of holding the same, shall be proved by the Note Register.

(d) If the Company shall solicit from the Holders of Notes any request, demand, authorization, direction, notice, consent, waiver or other Act, the Company may, at its option, by or pursuant to a Board Resolution, fix in advance a record date for the determination of Holders entitled to give such request, demand, authorization, direction, notice, consent, waiver or other Act, but the Company shall have no obligation to do so. Notwithstanding TIA Section 316(c), such record date shall be the record date specified in or pursuant to such Board Resolution, which shall be a date not earlier than the date 30 days prior to the first solicitation of Holders generally in connection therewith and not later than the date such solicitation is completed. If such a record date is fixed, such request, demand, authorization, direction, notice, consent, waiver or other Act may be given before or after such record date, but only the Holders of record at the close of business

on such record date shall be deemed to be Holders for the purposes of determining whether Holders of the requisite proportion of Outstanding Notes have authorized or agreed or consented to such request, demand, authorization, direction, notice, consent, waiver or other Act, and for that purpose the Outstanding Notes shall be computed as of such record date; *provided* that no such authorization, agreement or consent by the Holders on such record date shall be deemed effective unless it shall become effective pursuant to the provisions of this Indenture not later than eleven months after the record date.

(e) Any request, demand, authorization, direction, notice, consent, waiver or other Act of the Holder of any Note shall bind every future Holder of the same Note and the Holder of every Note issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof in respect of anything done, omitted or suffered to be done by the Trustee or the Company in reliance thereon, whether or not notation of such action is made upon such Note.

SECTION 105. *Notices, Etc., to Trustee and the Company.*

Any request, demand, authorization, direction, notice, consent, waiver or Act of Holders or other document provided or permitted by this Indenture to be made upon, given or furnished to, or filed with,

(1) the Trustee by any Holder or by the Company shall be sufficient for every purpose (unless otherwise herein expressly provided) hereunder if made, given, furnished or filed in

writing to or with the Trustee at its Corporate Trust Office, Attention: Global Trust Services, or

(2) the Company or by the Trustee or by any Holder shall be sufficient for every purpose hereunder (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, to the Company addressed to it at the address of its principal office specified in the first paragraph of this Indenture, or at any other address previously furnished in writing to the Trustee by the Company.

SECTION 106. *Notice to Holders; Waiver.*

Where this Indenture provides for notice of any event to Holders by the Company or the Trustee, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, to each Holder affected by such event, at its address as it appears in the Note Register, in each case not later than the latest date, and not earlier than the earliest date, prescribed hereunder for the giving of such notice and additionally notified by the Company or by the Trustee at the written direction of the Company in the manner and within the terms set forth below. In any case where notice to Holders is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder shall affect the sufficiency of such notice with respect to other Holders. Any notice mailed to a Holder in the manner herein prescribed shall be conclusively deemed to have been received by such Holder, whether or not such Holder actually receives such

notice. Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

In case by reason of the suspension of or irregularities in regular mail service or by reason of any other cause, it shall be impracticable to mail notice of any event to Holders when such notice is required to be given pursuant to any provision of this Indenture, then any manner of giving such notice as shall be satisfactory to the Trustee shall be deemed to be a sufficient giving of such notice for every purpose hereunder.

SECTION 107. *Effect of Headings and Table of Contents.*

The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof.

SECTION 108. *Successors and Assigns.*

All covenants and agreements in this Indenture by the Company shall bind its successors and assigns, whether so expressed or not.

SECTION 109. *Separability Clause.*

In case any provision in this Indenture or in the Notes shall be invalid, illegal or unenforceable, the validity, legality

and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

SECTION 110. *Benefits of Indenture.*

Nothing in this Indenture or in the Notes, express or implied, shall give to any Person, other than the parties hereto, any Paying Agent, any Note Registrar and their successors hereunder and the Holders of any benefit or any legal or equitable right, remedy or claim under this Indenture.

SECTION 111. *Governing Law.*

THIS INDENTURE AND THE NOTES SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

SECTION 112. *Consent to Jurisdiction and Service of Process.*

(a) The Company irrevocably submits to the jurisdiction of any court of the State of New York or any United States federal court sitting in the Borough of Manhattan, New York City, New York, United States, and any appellate court from any thereof, and waives any immunity from the jurisdiction of such courts over any suit, action or proceeding that may be brought in connection with this Indenture or the Notes. The Company irrevocably waives, to the fullest extent permitted by law, any objection to any suit, action, or proceeding that may be brought in connection with this Indenture or the Notes, including such actions, suits or proceedings relating to securities laws of the United States

of America or any state thereof, in such courts whether on the grounds of venue, residence or domicile or on the ground that any such suit, action or proceeding has been brought in an inconvenient forum. The Company agrees that final judgment in any such suit, action or proceeding brought in such court shall be conclusive and binding upon the Company and may be enforced in any court to the jurisdiction of which the Company is subject by a suit upon such judgment.

(b) The Company agrees that service of all writs, process and summonses in any suit, action or proceeding brought in connection with this Indenture or the Notes against the Company in any court of the State of New York or any United States federal court sitting in the Borough of Manhattan, New York City may be made upon CT Corporation System at 1633 Broadway, New York, New York 10019, whom the Company irrevocably appoints as its authorized agent for service of process. The Company represents and warrants that CT Corporation System has agreed to act as the agent for service of process for the Company. The Company agrees that such appointment shall be irrevocable so long as any of the Notes remain Outstanding or until the irrevocable appointment by the Company of a successor in The City of New York as its authorized agent for such purpose and the acceptance of such appointment by such successor. The Company further agrees to take any and all action, including the filing of any and all documents and instruments, that may be necessary to continue such appointment in full force and effect as aforesaid. If CT Corporation System shall cease to act as the agent for service of process for the Company, the Company shall appoint without delay another such agent and provide prompt written notice to the Trustee of such

appointment. With respect to any such action in any court of the State of New York or any United States federal court in the Borough of Manhattan, New York City, service of process upon CT Corporation System, as the authorized agent of the Company for service of process, and written notice of such service to the Company shall constitute personal service of process upon the Company.

(c) Nothing in this Section shall affect the right of any party to serve legal process in any other manner permitted by law or affect the right of any party to bring any action or proceeding against any other party or its property in the courts of other jurisdictions.

SECTION 113. *Legal Holidays*.

In any case where any Interest Payment Date, Mandatory Redemption Date or any date established for the payment of Defaulted Interest pursuant to Section 309 or Redemption Date or Stated Maturity or Maturity of any Note shall not be a Business Day, then (notwithstanding any other provision of this Indenture or of the Notes) payment of principal or premium, if any, or interest, including Additional Interest, if any, or Additional Amounts, if any, need not be made on such date, but may be made on the next succeeding Business Day with the same force and effect as if made on the Interest Payment Date, Mandatory Redemption Date, or date established for payment of Defaulted Interest pursuant to Section 309, Redemption Date or at the Stated Maturity or Maturity; *provided* that no interest shall accrue for the period from and after such Interest Payment Date, Mandatory Redemption Date or date established for payment of

Defaulted Interest pursuant to Section 309, Redemption Date, Stated Maturity or Maturity, as the case may be.

SECTION 114. *Rules by Trustee, Paying Agent or Registrar.*

The Trustee may make reasonable rules for action by or at a meeting of Holders and the Paying Agent or Registrar may make reasonable rules for its functions, in each case, not inconsistent with the provisions of this Indenture and the Notes.

SECTION 115. *Incorporation by Reference of Trust Indenture Act.*

Whenever this Indenture refers to a provision of the TIA, the provision is incorporated by reference in and made a part of this Indenture. The following TIA terms used in this Indenture have the following meanings:

"indenture notes" means the Notes;

"indenture note holder" means a Holder;

"indenture trustee" or "institutional trustee" means the Trustee; and

"obligor" on the indenture notes means the Company or any other successor obligor on the Notes.

All other TIA terms used in this Indenture that are defined by the TIA, defined by reference in the Trust Indenture Act

to another statute or defined by a rule of the Commission and not otherwise defined herein shall have the meanings assigned to them therein.

ARTICLE TWO

NOTE FORMS

SECTION 201. *Forms Generally.*

The Notes shall be known as the "141¼% Senior Secured Notes due 2006" of the Company. The Initial Notes and the Exchange Notes will be considered collectively to be a single class for all purposes under this Indenture, including, without limitation, waivers, amendments, redemptions and offers to purchase. The Notes and the Trustee's certificate of authentication shall be in substantially the forms set forth in this Article, with such appropriate insertions, omissions, substitutions and other variations as are required by law or permitted by this Indenture, and may have such letters, notations, numbers or other marks of identification and such legends or endorsements placed thereon as the Company may deem appropriate (and as not prohibited by the terms of this Indenture) or as may be required or appropriate to comply with any law or with the rules of any securities exchange on which such Notes may be listed, or to conform to general usage, or as may, consistently herewith, be determined by the officers executing such Notes, as evidenced by their execution of the Notes. Each Note shall be dated the date of its authentication. Any portion of the text of any Note may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the Note.

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The Global Notes shall be printed, lithographed or engraved on steel-engraved borders or may be produced in any other manner permitted by the rules under any applicable securities laws or any securities exchange on which the Notes may be listed, all as determined by the officers of the Company executing such Notes, as evidenced by their execution of such Notes.

Initial Notes offered and sold in reliance on Rule 144A may be issued in the form of a Rule 144A Global Note in registered form, substantially in the form set forth in Exhibit A deposited with the Trustee, as custodian for the Depositary, duly executed by the Company and authenticated by the Trustee as hereinafter provided. The outstanding aggregate principal amount of the Rule 144A Global Note may from time to time be increased or decreased by adjustments made on the records of the Trustee, as custodian for the Depositary or its nominee, as hereinafter provided.

Initial Notes offered and sold in offshore transactions in reliance on Regulation S shall be initially issued in the form of a Regulation S Global Note in registered form, substantially in the form set forth in Exhibit A deposited with the Trustee, as custodian for the Depositary, duly executed by the Company and authenticated by the Trustee as hereinafter provided. The aggregate outstanding principal amount of the Regulation S Global Note may from time to time be increased or decreased by adjustments made in the records of the Trustee, as custodian for the Depositary or its nominee, as herein provided.

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SECTION 202. *Private Placement Legend.*

Unless and until (i) an Initial Note is sold under an effective Registration Statement or (ii) an Initial Note is exchanged for an Exchange Note in connection with an effective Registration Statement, in each case pursuant to the Registration Rights Agreement, each Rule 144A Global Note shall bear the following legend set forth below (the "Private Placement Legend") on the face thereof.

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT") OR THE SECURITIES LAWS OF ANY STATE AND ACCORDINGLY, MAY NOT BE OFFERED OR SOLD WITHIN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF U.S. PERSONS EXCEPT AS SET FORTH IN THE FOLLOWING SENTENCE. THE HOLDER HEREOF, BY ACCEPTANCE OF THIS NOTE, AGREES FOR THE BENEFIT OF TRAFFIC STREAM (BVI) INFRASTRUCTURE LIMITED (THE "ISSUER") THAT THIS NOTE MAY BE OFFERED, RESOLD, PLEDGED OR OTHERWISE TRANSFERRED ONLY: (1) TO THE ISSUER OR ANY AFFILIATE THEREOF, (2) TO A PERSON WHOM THE HOLDER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER, AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT ("RULE 144A"), THAT IS PURCHASING FOR ITS OWN ACCOUNT OR

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FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A AS INDICATED BY THE BOX CHECKED BY THE HOLDER ON THE REVERSE OF THIS NOTE, (3) IN AN OFFSHORE TRANSACTION IN ACCORDANCE WITH REGULATION S UNDER THE SECURITIES ACT, (4) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PURSUANT TO RULE 144 THEREUNDER (IF AVAILABLE) OR (5) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, IN EACH CASE IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES OR ANY OTHER JURISDICTION AND SUBJECT TO THE ISSUER'S RIGHT PRIOR TO ANY OFFER, RESALE OR TRANSFER PURSUANT TO CLAUSE (4) ABOVE, TO REQUIRE DELIVERY OF ANY OPINION OF COUNSEL, CERTIFICATION AND/OR OTHER INFORMATION SATISFACTORY TO THE ISSUER, AND IN EACH OF THE FOREGOING CASES, TO REQUIRE THAT A CERTIFICATE OF TRANSFER IN THE FORM APPEARING ON THE OTHER SIDE OF THIS NOTE BE COMPLETED AND DELIVERED BY THE HOLDER TO THE TRUSTEE. THIS LEGEND MAY BE REMOVED AFTER THE EXPIRATION OF TWO YEARS FROM THE

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LATER OF (I) THE DATE OF ORIGINAL ISSUANCE OF THE NOTE EVIDENCED HEREBY, OR (II) THE LAST DAY ON WHICH THE ISSUER OR ANY AFFILIATE OF THE ISSUER WAS THE OWNER OF THE NOTE EVIDENCED HEREBY (OR OF ANY PREDECESSOR OF SUCH NOTE).

Each Global Note, whether or not an Initial Note, shall also bear the following legend on the face thereof:

UNLESS THIS GLOBAL NOTE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY GLOBAL NOTE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFERS OF THIS GLOBAL NOTE SHALL BE LIMITED TO TRANSFERS IN WHOLE,

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BUT NOT IN PART, TO DTC OR NOMINEES OF DTC OR TO A SUCCESSOR OF DTC OR SUCH SUCCESSOR'S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL NOTE SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN SECTIONS 306 AND 307 OF THE INDENTURE.

ARTICLE THREE

THE NOTES

SECTION 301. *Title and Terms.*

The aggregate principal amount of Notes which may be authenticated and delivered under this Indenture is limited to US$119,000,000, except for Notes authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Notes pursuant to Section 304, 305, 306, 307, 906 or 1015.

The Notes shall be known and designated as the "14¼% Senior Secured Notes due 2006" of the Company. Their Stated Maturity shall be May 1, 2006 and, except as otherwise set forth herein they shall bear interest at the rate of 14¼% per annum from May 6, 1998, or from the most recent Interest Payment Date to which interest has been paid or duly provided for, payable on May 1 and November 1 in each year commencing November 1, 1998 and at said Stated Maturity, until the principal thereof is paid or duly provided for.

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The principal of, premium (if any) interest, including Additional Interest, if any, on and Additional Amounts, if any, and any other amounts due hereunder or under the Notes shall be payable at the office or agency of the Trustee maintained for such purpose in The City of New York, or at such other Paying Agent as the Company may appoint; *provided, however,* that, at the option of the Company, interest may be paid by check mailed to addresses of the Persons entitled thereto as such addresses shall appear on the Note Register.

The Notes shall be redeemable as provided in Article Eleven.

SECTION 302. *Denominations.*

The Notes shall be issuable only in registered form without coupons and only in denominations of US$1,000 and any integral multiple thereof.

SECTION 303. *Execution, Authentication, Delivery and Dating.*

The Notes shall be executed on behalf of the Company by its Chairman or any Director, under its corporate seal reproduced thereon, if any, and attested by its Secretary or an Assistant Secretary. The signature of any of these officers on the Notes may be manual or facsimile signatures of the present or any future such authorized officer and may be imprinted or otherwise reproduced on the Notes.

Notes bearing the manual or facsimile signatures of individuals who were at any time the proper officers of the

Company shall bind the Company, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Notes or did not hold such offices at the date of such Notes.

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Notes executed by the Company to the Trustee for authentication by the Authenticating Agent, together with a Company Order for the authentication and delivery of such Notes, and the Authenticating Agent in accordance with such Company Order shall authenticate and deliver such Notes.

Each Note shall be dated the date of its authentication.

No Note shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose unless there appears on such Note a certificate of authentication substantially in the form provided for herein duly executed by the Authenticating Agent by manual signature of an authorized officer, and such certificate upon any Note shall be conclusive evidence, and the only evidence, that such Note has been duly authenticated and delivered hereunder and is entitled to the benefits of this Indenture.

In case the Company, pursuant to Article Eight, shall be consolidated or merged with or into any other Person or shall convey, transfer, lease or otherwise dispose of its properties and assets substantially as an entirety to any Person, and the successor Person resulting from such consolidation, or surviving such merger, or into which the Company shall have been merged, or the Person which shall have received a conveyance, transfer, lease or other disposition as aforesaid,

shall have executed an indenture supplemental hereto with the Trustee pursuant to Article Eight, any of the Notes authenticated or delivered prior to such consolidation, merger, conveyance, transfer, lease or other disposition may, from time to time, at the request of the successor Person, be exchanged for other Notes executed in the name of the successor Person with such changes in phraseology and form as may be appropriate, but otherwise in substance of like tenor as the Notes surrendered for such exchange and of like principal amount; and the Trustee, upon Company Request of the successor Person, shall authenticate and deliver Notes as specified in such request for the purpose of such exchange. If Notes shall at any time be authenticated and delivered in any new name of a successor Person pursuant to this Section in exchange or substitution for or upon registration of transfer of any Notes, such successor Person, at the option of the Holders but without expense to them, shall provide for the exchange of all Notes at the time outstanding for Notes authenticated and delivered in such new name.

SECTION 304. *Temporary Notes*.

Pending the preparation of definitive Notes, the Company may execute, and upon a Company Order the Trustee shall authenticate and deliver, temporary Notes which are printed, lithographed, typewritten, mimeographed or otherwise produced, in any authorized denomination, substantially of the tenor of the definitive Notes in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the officers executing such Notes may determine, as conclusively evidenced by their execution of such Notes.

If temporary Notes are issued, the Company will cause definitive Notes to be prepared without unreasonable delay. After the preparation of definitive Notes, the temporary Notes shall be exchangeable for definitive Notes upon surrender of the temporary Notes at the office or agency of the Company designated for such purpose pursuant to Section 1002, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Notes, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a like principal amount of definitive Notes of authorized denominations. Until so exchanged, the temporary Notes shall in all respects be entitled to the same benefits under this Indenture as definitive Notes.

SECTION 305. *Registration, Registration of Transfer and Exchange.*

The Company shall cause to be kept at the Corporate Trust Office of the Trustee a register (the register maintained in such office and in any other office or agency designated pursuant to Section 1002 being herein sometimes referred to as the "Note Register") in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Notes and of transfers of Notes. The Note Register shall be in written form or any other form capable of being converted into written form within a reasonable time. At all reasonable times, the Note Register shall be open to inspection by the Trustee. The Trustee is hereby initially appointed as note registrar (the "Note Registrar") for the purpose of registering Notes and transfers of Notes as herein provided.

Upon surrender for registration of transfer of any Note at the office or agency of the Company designated pursuant to Section 1002, the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Notes of any authorized denomination or denominations of a like aggregate principal amount.

At the option of the Holder, Notes may be exchanged for other Notes of any authorized denomination and of a like aggregate principal amount, upon surrender of the Notes to be exchanged at such office or agency. Whenever any Notes are so surrendered for exchange (including an exchange of Initial Notes for Exchange Notes), the Company shall execute, and the Trustee shall authenticate and deliver, the Notes which the Holder making the exchange is entitled to receive, *provided* that no exchange of Initial Notes for Exchange Notes shall occur until an Exchange Offer Registration Statement shall have been declared effective by the Commission, the Trustee shall have received a Company Request directing such exchange and the Initial Notes to be exchanged for the Exchange Notes shall be cancelled by the Trustee.

All Notes issued upon any registration of transfer or exchange of Notes shall be the valid obligations of the Company, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Notes surrendered upon such registration of transfer or exchange.

Every Note presented or surrendered for registration of transfer or for exchange shall (if so required by the Company

or the Note Registrar) be duly endorsed, or be accompanied by a written instrument of transfer, in form satisfactory to the Company and the Note Registrar, duly executed by the Holder thereof or his attorney duly authorized in writing.

No service charge shall be made for any registration of transfer or exchange or redemption of Notes, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Notes, other than exchanges pursuant to Section 304, 906, 1015 or 1105(4) not involving any transfer.

The Company shall not be required (i) to issue, register the transfer of or exchange any Note during a period beginning at the opening of business 15 days before the selection of Notes to be redeemed under Section 1104 and ending at the close of business on the day of such mailing of the relevant notice of redemption, or (ii) to register the transfer of or exchange any Note so selected for redemption in whole or in part, except the unredeemed portion of any Note being redeemed in part.

SECTION 306. *Kook-Entry Provisions for Global Notes.*

(a) Each Global Note initially shall (i) be registered in the name of the Depositary for such Global Note or the nominee of such Depositary, (ii) be delivered to the Trustee as custodian for such Depositary and (iii) bear legends (as applicable) as set forth in Section 202.

Members of, or participants in, the Depositary ("Agent Members") shall have no rights under this Indenture

with respect to any Global Note held on their behalf by the Depositary, or the Trustee as its custodian, or under any Global Note, and the Depositary may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the absolute owner of such Global Note for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Trustee or any agent of the Company or the Trustee from giving effect to any written certification, proxy or other authorization furnished by the Depositary or impair, as between the Depositary and its Agent Members, the operation of customary practices governing the exercise of the rights of a beneficial owner of any Note.

(b) Transfers of a Global Note shall be limited to transfers of such Global Note in whole, but not in part, to the Depositary, its successors or their respective nominees and, in part, in the circumstances described in paragraph (d) hereof. Interests of beneficial owners in a Global Note may be transferred in accordance with the applicable rules and procedures of the Depositary and the provisions of Section 307. Certificated Notes shall be transferred to all beneficial owners in exchange for their beneficial interests in the Global Notes, if (i) the Depositary notifies the Company that it is unwilling or unable to continue as Depositary for the Global Notes, or the Depositary ceases to be a "Clearing Agency" registered under the Exchange Act and a successor depositary is not appointed by the Company within 90 days, (ii) an Event of Default has occurred and Holders of more than 25% in aggregate principal amount of the Notes at the time Outstanding represented by the Global Notes advise the Trustee through the Depositary in writing that the continuation of a book-entry system through the

Depositary with respect to the Global Notes is no longer required or (iii) the Company determines not to have the Notes so registered by Global Notes.

(c) Any beneficial interest in one of the Global Notes that is transferred to a person who takes delivery in the form of an interest in the other Global Note will, upon transfer, cease to be an interest in such Global Note and become an interest in the other Global Note and, accordingly, will thereafter be subject to all transfer restrictions, if any, and other procedures applicable to beneficial interests in such other Global Note for as long as it remains such an interest.

(d) In connection with the transfer of the entire Rule 144A Global Note or Regulation S Global Note to beneficial owners pursuant to paragraph (b) of this Section, the Rule 144A Global Note or Regulation S Global Note, as the case may be, shall be deemed to be surrendered to the Trustee for cancellation, and the Company shall execute, and the Trustee shall authenticate and deliver, to each beneficial owner identified by the Depositary in exchange for its beneficial interest in the Rule 144A Global Note or Regulation S Global Note, as the case may be, an equal aggregate principal amount of Certificated Notes, of authorized denominations.

(e) Any Certificated Note delivered in exchange for an interest in the Rule 144A Global Note pursuant to paragraph (b) of this Section shall, except as otherwise provided by paragraph (a)(i) of Section 307, bear the Private Placement Legend.

(f) The Holder of a Global Note may grant proxies and otherwise authorize any person, including Agent Members

and persons that may hold interests through Agent Members, to take any action which such Holder is entitled to take under this Indenture or the Notes held by it.

(g) In connection with the execution, authentication and delivery of Certificated Notes in exchange for beneficial interests in a Global Note pursuant to Section 306(b), the Note Registrar shall reflect on its books and records a decrease in the principal amount of the relevant Global Note equal to the principal amount of such Certificated Notes and the Company shall execute and the Trustee shall authenticate and deliver one or more Certificated Notes having an equal aggregate principal amount.

SECTION 307. *Transfer Provisions.*

(a) *General.* Unless and until (i) an Initial Note is sold under an effective Registration Statement, or (ii) an Initial Note is exchanged for an Exchange Note in connection with an effective Registration Statement, in each case pursuant to the Registration Rights Agreement, the provisions described below shall apply.

(b) *Certain Definitions.* As used in this Section 307 only, "delivery" of a certificate by a transferee or transferor means the delivery to the Note Registrar by such transferee or transferor of the applicable certificate duly completed; "holding" includes both possession of a physical Note and ownership of a beneficial interest in a Global Note, as the context requires; "transferring" a Global Note means transferring that portion of the principal amount of the transferor's beneficial interest therein that the transferor has

notified the Note Registrar that it has agreed to transfer; and "transferring" a Certificated Note means transferring that portion of the principal amount thereof that the transferor has notified the Note Registrar that it has agreed to transfer.

(c) *Procedures and Requirements.*

1. If the proposed transferor holds:

(A) a beneficial interest in the Rule 144A Global Note:

(i) and the proposed transferee is or is acting through an Agent Member and requests that the proposed transferee receive a beneficial interest in the Rule 144A Global Note, then the transfer shall be effected in accordance with the procedures of the Depositary therefor; and

(ii) and the proposed transferor delivers a Regulation S Certificate and the proposed transferee is or is acting through an Agent Member and requests that the proposed transferee receive a beneficial interest in the Regulation S Global Note, then the Note Registrar shall (x) record a decrease in the principal amount of the Rule 144A Global Note in an amount equal to the beneficial interest therein being transferred, (y) record an increase in the principal amount of the Regulation S Global Note equal to the amount of such decrease and (z) notify the Depositary in accordance with the procedures of the Depositary that it approves of such transfer, *provided,*

however, that until the 41st day after the later of the Commencement of the Offering and the Issue Date, beneficial interests in the Regulation S Global Note may be held only in or through accounts maintained at the Depositary at Euroclear and Cedel (or by Agent Members acting for the account thereof).

(B) a beneficial interest in the Regulation S Global Note:

(i) and the proposed transferor delivers a Rule 144A Certificate and the proposed transferee is or is acting through an Agent Member and requests that the proposed transferee receive a beneficial interest in the Rule 144A Global Note, then the Note Registrar shall (x) record a decrease in the principal amount of the Regulation S Global Note in an amount equal to the beneficial interest therein being transferred, (y) record an increase in the principal amount of the Rule 144A Global Note equal to the amount of such decrease and (z) notify the Depositary in accordance with the procedures of the Depositary that it approves of such transfer; and

(ii) and the proposed transferor requests that the proposed transferee receive a beneficial interest in the Regulation S Global Note, then the transfer will be effected through the procedures of the Depositary therefor *provided, however,* that until the 41st day after the later of the Commencement of the Offering and the Issue Date, beneficial interests in the Regulation S Global Note may be

held only in or through accounts maintained at the Depositary at Euroclear and Cedel (or by Agent Members acting for the account thereof).

(d) *Execution, Authentication and Delivery of Certificated Notes*. In any case in which the Note Registrar is required to deliver a Certificated Note to a transferee, the Company shall execute, and the Trustee shall authenticate and deliver, such Certificated Note.

(e) *Certain Additional Terms Applicable to Certificated Notes*.

(i) Any transferee entitled to receive a Certificated Note may request that the principal amount thereof be evidenced by one or more Certificated Notes in any authorized denomination or denominations and the Note Registrar shall comply with such request if all other transfer restrictions are satisfied.

(ii) In the event that a transferor transfers less than the entire principal amount of a Certificated Note surrendered for transfer, following the transfer the Note Registrar shall deliver to the transferor a new Certificated Note of the same type in principal amount equal to the untransferred portion of the surrendered Certificated Note.

(f) *Transfers Not Covered by Section 307(c)*. The Note Registrar shall record, upon receipt of a Company Request from the Company so to do and stating therein that the

Company has received from the proposed transferor or transferee a Non-Registration Opinion and Supporting Evidence, a transfer not otherwise permitted by Section 307(c).

(g) *Private Placement Legend*. Upon the transfer, exchange or replacement of Notes not bearing the Private Placement Legend, the Note Registrar shall deliver Notes that do not bear the Private Placement Legend. Upon the transfer, exchange or replacement of Notes bearing the Private Placement Legend, the Note Registrar shall deliver only Notes that bear the Private Placement Legend unless either (i) the Private Placement Legend is no longer required pursuant to Section 202, or (ii) the Trustee is otherwise directed pursuant to a Company Request.

(h) *General*. By its acceptance of any Note bearing the Private Placement Legend, each Holder of such Note acknowledges the restrictions on transfer of such Note set forth in this Indenture and in the Private Placement Legend and agrees that it will transfer such Note only as provided in this Indenture. The Note Registrar shall not register a transfer of any Note unless such transfer complies with the restrictions with respect thereto set forth in this Indenture. The Note Registrar shall not be required to determine (but may rely upon a determination made by the Company) the sufficiency of any such certifications, legal opinions or other information.

SECTION 308. *Mutilated, Destroyed, Lost and Stolen Notes*.

If (i) any mutilated Note is surrendered to the Trustee, or (ii) the Company and the Trustee receive evidence to their

satisfaction of the destruction, loss or theft of any Note, and there is delivered to the Company and the Trustee such security or indemnity as may be required by them to save each of them harmless, then, in the absence of notice to the Company or the Trustee that such Note has been acquired by a bona fide purchaser, ,the Company shall execute and upon Company Order the Trustee shall authenticate and deliver, in exchange for any such mutilated Note or in lieu of any such destroyed, lost or stolen Note, a new Note of like tenor and principal amount, bearing a number not contemporaneously outstanding.

In case any such mutilated, destroyed, lost or stolen Note has become or is about to become due and payable, the Company in its discretion may, instead of issuing a new Note, pay such Note.

Upon the issuance of any new Note under this Section, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

Every new Note issued pursuant to this Section in lieu of any mutilated, destroyed, lost or stolen Note shall constitute an original contractual obligation of the Company, whether or not the mutilated, destroyed, lost or stolen Note shall be at any time enforceable by anyone, and shall be entitled to all benefits of this Indenture equally and proportionately with any and all other Notes duly issued hereunder.

The provisions of this Section are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Notes.

SECTION 309. *Payment of Interest; Interest Rights Preserved.*

Interest on any Note (and Additional Interest, if any, and any Additional Amounts payable in respect thereof, if any) which is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall be paid to the Person in whose name such Note (or one or more Predecessor Notes) is registered at the close of business on the Regular Record Date for such interest at the office or agency of the Company maintained for such purpose pursuant to Section 1002; *provided, however,* that each installment of interest may at the Company's option be paid by (i) mailing a check for such interest, payable to or upon the written order of the Person entitled thereto pursuant to Section 310, to the address of such Person as it appears in the Note Register on such Regular Record Date or (ii) transfer to an account located in the United States maintained by the payee and as notified to the Trustee prior to such Regular Record Date.

Any interest on any Note (and Additional Interest, if any, and any Additional Amounts payable in respect thereof, if any) which is payable, but is not punctually paid or duly provided for, on any Interest Payment Date shall forthwith cease to be payable to the Holder on the Regular Record Date by virtue of having been such Holder, and such defaulted interest (and Additional Interest, if any, and any Additional

Amounts payable in respect thereof, if any) and (to the extent lawful) interest on such defaulted interest at the rate borne by the Notes (such defaulted interest and interest thereon herein collectively called "Defaulted Interest") may be paid by the Company, at its election in each case, as provided in clause (1) or (2) below:

(1) The Company may elect to make payment of any Defaulted Interest to the Persons in whose names the Notes (or their respective Predecessor Notes) are registered at the close of business on a Special Record Date for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Note and the date of the proposed payment, and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit at least one Business Day prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as provided in this clause. Thereupon the Trustee shall fix a Special Record Date for the payment of such Defaulted Interest which shall be not more than 15 days and not less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the Trustee of the notice of the proposed

payment. The Trustee shall promptly notify the Company of such Special Record Date, and in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be given in the manner provided for in Section 106, not less than 10 days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been so given, such Defaulted Interest shall be paid to the Persons in whose names the Notes (or their respective Predecessor Notes) are registered at the close of business on such Special Record Date and shall no longer be payable pursuant to the following clause (2).

(2) The Company may make payment of any Defaulted Interest in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Notes may be listed, and upon such notice as may be required by such exchange, if, after notice given by the Company to the Trustee of the proposed payment pursuant to this clause, such manner of payment shall be deemed practicable by the Trustee.

Subject to the foregoing provisions of this Section, each Note delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Note shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Note.

SECTION 310. *Persons Deemed Owners.*

Prior to the due presentment of a Note for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name such Note is registered in the Note Register as the owner of such Note for the purpose of receiving payment of principal of (and premium, if any) and (subject to Sections 305 and 309) interest on such Note and for all other purposes whatsoever, whether or not such Note be overdue, and none of the Company, the Trustee or any agent of the Company or the Trustee shall be affected by notice to the contrary.

SECTION 311. *Cancellation.*

All Notes surrendered for payment, redemption or registration of transfer or exchange shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee and shall be promptly cancelled by it. The Company may at any time deliver to the Trustee for cancellation any Notes previously authenticated and delivered hereunder which the Company may have acquired in any manner whatsoever, and may deliver to the Trustee (or to any other Person for delivery to the Trustee) for cancellation any Notes previously authenticated hereunder which the Company has not issued and sold, and all Notes so delivered shall be promptly cancelled by the Trustee. If the Company shall so acquire any of the Notes, however, such acquisition shall not operate as a redemption or satisfaction of the indebtedness represented by such Notes unless and until the same are surrendered to the Trustee for cancellation. No Notes shall be authenticated in lieu of or in exchange for any Notes

cancelled as provided in this Section, except as expressly permitted by this Indenture. All cancelled Notes held by the Trustee shall be disposed of by the Trustee in accordance with its customary procedures and certification of their disposal delivered to the Company unless by Company Order the Company shall direct that cancelled Notes be returned to it.

SECTION 312. *Computation of Interest.*

Interest on the Notes shall be computed on the basis of a 360-day year of twelve 30-day months.

SECTION 313. *CUSIP and CINS Numbers.*

The Company in issuing the Notes may use "CUSIP" and "CINS" numbers (if then generally in use), and, if so, the Trustee shall use "CUSIP" or "CINS" numbers in notices of redemption or exchange as a convenience to Holders; *provided* that any such notice shall state that no representation is made as to the correctness of such numbers either as printed on the Notes or as contained in any notice of a redemption or exchange and that reliance may be placed only on the other identification numbers printed on the Notes, and any such redemption shall not be affected by any defect in or omission of such numbers.

ARTICLE FOUR

SATISFACTION AND DISCHARGE

SECTION 401. *Satisfaction and Discharge of Indenture.*

This Indenture shall upon Company Request cease to be of further effect (except as to surviving rights of registration

of transfer or exchange of the Notes as expressly provided for herein or pursuant hereto and obligations to pay Additional Amounts, if any) and the Trustee, at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture when

(1) either

(a) all Notes theretofore authenticated and delivered (other than (i) Notes which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 308 and (ii) Notes for whose payment money has theretofore been deposited in trust with the Trustee or any Paying Agent or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust, as provided in Section 1003) have been delivered to the Trustee for cancellation; or

(b) all such Notes not theretofore delivered to the Trustee for cancellation

(i) have become due and payable, or

(ii) will become due and payable at their Stated Maturity within one year, or,

(iii) are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company,

and the Company, in the case of (i), (ii) or (iii) above, has irrevocably deposited or caused to be deposited with the Trustee as trust funds in trust for such purpose an amount sufficient to pay and discharge the entire Indebtedness on such Notes not theretofore delivered to the Trustee for cancellation, for principal of, premium, if any, Additional Amounts, if any, and interest on the Notes to the date of such deposit (in the case of Notes which have become due and payable) or to the Stated Maturity or Redemption Date, as the case may be;

(2) the Company has paid or caused to be paid all other sums payable hereunder by the Company; and

(3) the Company has delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture have been complied with.

Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Company to the Trustee under Section 606, Section 1007 and, if money shall have been deposited with the Trustee pursuant to subclause (b) of clause (1) of this Section, the obligations of the Trustee under Section 402 and the last paragraph of Section 1003 shall survive.

SECTION 402. *Application of Trust Money*.

Subject to the provisions of the last paragraph of Section 1003, all money deposited with the Trustee pursuant

to Section 401 shall be held in trust and applied by it, in accordance with the provisions of the Notes and this Indenture, to the payment, either directly or through any Paying Agent (including the Company acting as its own Paying Agent) as the Trustee may determine, to the Persons entitled thereto, of the principal of, premium, if any, Additional Amounts, if any, and interest, including Additional Interest, if any, on the Notes for whose payment such money has been deposited with the Trustee; but such money need not be segregated from other funds except to the extent required by law.

ARTICLE FIVE

REMEDIES

SECTION 501. *Events of Default.*

"Event of Default", wherever used herein, means any one of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(1) default in the payment of any interest, including Additional Interest, if any, and Additional Amounts, if any, in respect of interest on any Note when it becomes due and payable and continuance of such default for a period of five Business Days; or

(2) default in the payment of the principal of or premium, if any, on any Note when it becomes due and

payable at its Stated Maturity, or the failure to redeem Notes in the required principal amounts on any Mandatory Redemption Date; or

(3) default in the performance, or breach, of the provisions of Article Eight of this Indenture or the failure to make or consummate a Change of Control Offer in accordance with the provisions of Section 1015; or

(4) the failure to deliver to the Trustee the LOC on or before January 6, 1999 as provided in the LOC and Deposit Agreement (unless the Deposit shall have been made on or before January 6, 1999), or the failure to make the Deposit into the Construction Funding Account on or before May 6, 1999 as provided in the LOC and Deposit Agreement (unless as a result of such failure the Trustee shall have the right to draw such amount under the LOC, in which case no Event of Default shall occur unless and until the drawing thereunder shall have been dishonored by the issuer of such LOC), each on the respective terms and conditions set out in the LOC and Deposit Agreement as in effect on the date hereof and the LOC; or

(5) default in the performance, or breach, of any covenant or agreement of the Company, the Holding Company, any of the Hong Kong Holding Companies or any of the Toll Road Joint Ventures contained in this Indenture or the Security Documents or any undertaking in an Officer's Certificate (other than a default in the performance, or breach, of a covenant or agreement which is specifically dealt with elsewhere in this Indenture), and continuance of such default or breach for a period of 30 days after there has been given,

by registered or certified mail, to the Company by the Trustee or to the Company and the Trustee by the Holders of at least 25% in the aggregate principal amount of the Outstanding Notes, *provided, however,* that any failure on the part of the Company to (A) cause the Hong Kong Holding Companies to dispose of their interests in the Non-Project Toll Road Joint Ventures within eighteen months after the Issue Date in accordance with Section 1023, or (B) install computerized ticketing systems in accordance with Section 1024 shall not constitute an Event of Default hereunder; or

(6) any default by the Company or any Subsidiary of the Company in the payment of the principal of or premium, if any, on Indebtedness aggregating US$2 million or more, when the same become due and payable at the final maturity thereof, or Indebtedness of the Company or any Subsidiary of the Company aggregating US$2 million or more shall have been accelerated or otherwise declared due and payable, or required to be prepaid or repurchased (other than by regularly scheduled required prepayment), prior to the Stated Maturity thereof; or

(7) (A) on or after the Issue Date, other than in accordance with the provisions of this Indenture, for any reason, other than the satisfaction in full and discharge of the obligations secured thereby, any Security Document ceases to be or is not in full force and effect or the Trustee shall cease to have first priority security interests in the Collateral or (B) on or after the Issue Date other than in accordance with the provisions of this Indenture, the Company asserts in writing that any Security Document has ceased to be or is not in full force and effect; or

(8) the entry of a decree or order by a court having jurisdiction in the premises adjudging the Company or any Subsidiary of the Company a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Company or any Subsidiary of the Company under any Bankruptcy Law or any other applicable federal or state law, or appointing a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Company or any Subsidiary of the Company or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order unstayed and in effect for a period of 60 consecutive days; or

(9) the institution by the Company or any Subsidiary of the Company of proceedings to be adjudicated a bankrupt or insolvent, or the consent by it to the institution of bankruptcy or insolvency proceedings against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under any Bankruptcy Law or any other applicable federal or state law, or the consent by it to the filing of any such petition or to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Company or any Subsidiary of the Company or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due; or

(10) the entry against the Company or any Subsidiary of the Company of any judgment or decree for the payment of money in excess of US$2 million (or an equivalent amount

in another currency) that is not discharged and either (A) commencement of an enforcement proceeding by any creditor upon such judgment or decree or (B) the passage of a period of 60 days following such judgment or decree during which such judgment or decree, is not waived or the execution thereof stayed; or

(11) (A) all or a substantial part of the property of the Company or any Subsidiary of the Company shall be condemned, seized or otherwise appropriated, or custody of such property shall be assumed by any governmental authority or court or other person purporting to act under the authority of the Government of any jurisdiction, or (B) the Company or any of its Subsidiaries shall be prevented from exercising normal control over all or a substantial part of its property, if in either case the whole or part of such property shall be material to the Company and its Subsidiaries considered as a whole, or (C) any of the Joint Venture Contracts becomes wholly or partially illegal, invalid or unenforceable and the Company fails to obtain a Rating Confirmation within 45 days after any such event occurs.

SECTION 502. *Acceleration of Maturity; Rescission and Annulment.*

If an Event of Default (other than an Event of Default specified in clause (8) or clause (9) of Section 501) occurs and is continuing, then and in every such case the Trustee or the Holders of not less than 25% in aggregate principal amount of the Notes Outstanding may, and the Trustee upon written request of such Holders shall, declare the principal of, premium, if any, and accrued interest on all of the

Outstanding Notes immediately due and payable, and upon any such declaration all such amounts payable in respect of the Notes shall become immediately due and payable. If an Event of Default specified in clause (8) or clause (9) of Section 501 occurs and is continuing, then the principal of, premium, if any, and accrued interest on all of the Outstanding Notes shall ipso facto become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Holder of Notes.

At any time after a declaration of acceleration has been made and before a judgment or decree for payment of the money due has been obtained by the Trustee as hereinafter provided in this Article, the Holders of a majority in principal amount of the Notes Outstanding, by written notice to the Company and the Trustee, may rescind and annul such declaration and its consequences if

(1) the Company has paid or deposited with the Trustee a sum sufficient to pay,

(A) all overdue interest on all outstanding Notes,

(B) all unpaid principal of (and premium, if any, on) any Outstanding Notes which has become due otherwise than by such declaration of acceleration, and interest on such unpaid principal at the rate borne by the Notes,

(C) to the extent that payment of such interest is lawful, interest on overdue interest at the rate borne by the Notes, and

(D) all sums paid or advanced by the Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel; and

(2) all Events of Default, other than the non-payment of amounts of principal of, premium, if any, or interest on Notes which have become due solely by such declaration of acceleration, have been cured or waived as provided in Section 513.

No such rescission shall affect any subsequent default or impair any right consequent thereon.

The Holders of not less than a majority in aggregate principal amount of the Outstanding Notes may, on behalf of the Holders of all the Notes, waive any past Defaults under this Indenture, except a Default in the payment of the principal of, premium, if any, or interest on any Note, or in respect of a covenant or provision which under this Indenture cannot be modified or amended without the consent of the Holder of each Note Outstanding.

SECTION 503. *Collection of Indebtedness and Suits for Enforcement by Trustee.*

The Company covenants that if

(a) default is made in the payment of any installment of interest including Additional Interest, if any, any Additional Amounts, if any, on any Note when such interest or Additional

Amounts becomes due and payable and such default continues for a period of five Business Days, or

(b) default is made in the payment of the principal of or premium, if any, on any Note at the Stated Maturity thereof, or on any Mandatory Redemption Date,

the Company will, upon demand of the Trustee, pay to the Trustee for the benefit of the Holders of such Notes, the whole amount then due and payable on such Notes for principal, premium, if any, interest on Additional Amounts, if any, and interest on any overdue principal, premium, if any, or Additional Amounts, if any, and, to the extent that payment of such interest shall be legally enforceable, upon any overdue installment of interest, including Additional Interest, if any and overdue principal, at the rate borne by the Notes, and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

If the Company fails to pay such amounts forthwith upon such demand, the Trustee, in its own name as trustee of an express trust, may institute a judicial proceeding for the collection of the sums so due and unpaid, may prosecute such proceeding to judgment or final decree and may enforce the same against the Company or any other obligor upon the Notes and collect the moneys adjudged or decreed to be payable in the manner provided by law out of the property of the Company or any other obligor upon the Notes, wherever situated.

If an Event of Default occurs and is continuing, the Trustee may in its discretion, proceed to protect and enforce its rights and the rights of the Holders by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any such rights, whether for the specific enforcement of any covenant or agreement in this Indenture or the Security Documents or in aid of the exercise of any power granted herein or therein, or to enforce any other proper remedy.

SECTION 504. *Trustee May File Proofs of Claim.*

In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Company or any other obligor upon the Notes or the property of the Company or of such other obligor or their creditors, the Trustee (irrespective of whether the principal of the Notes shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand on the Company for the payment of overdue principal, premium, if any, interest, or Additional Amounts, if any) shall be entitled and empowered, by intervention in such proceeding or otherwise,

(i) to file and prove a claim for the whole amount of principal (and premium, if any), interest and Additional Amounts, if any, owing and unpaid in respect of the Notes and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation,

expenses, disbursements and advances of the Trustee, its agents and counsel) and of the Holders allowed in such judicial proceeding, and

(ii) to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or similar official in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 606.

Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

SECTION 505. *Trustee May Enforce Claims Without Possession of Notes.*

All rights of action and claims under this Indenture or the Notes may be prosecuted and enforced by the Trustee without the possession of any of the Notes or the production thereof in any proceeding relating thereto, and any such

proceeding instituted by the Trustee shall be brought in its own name and as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, be for the ratable benefit of the Holders of the Notes in respect of which such judgment has been recovered.

SECTION 506. *Application of Money Collected.*

Any money collected by the Trustee pursuant to this Article shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money on account of principal (or premium, if any), interest, or Additional Amounts, if any, upon presentation of the Notes and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

FIRST: To the payment of all amounts due to the Trustee under Section 606;

SECOND: To the payment of the amounts then due and unpaid for principal of (and premium, if any), interest, including Additional Interest, if any, and Additional Amounts, if any, on the Notes in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the amounts due and payable on such Notes for principal (and premium, if any), interest, including Additional Invest, if any, and Additional Amounts, if any, respectively; and

THIRD: The balance, if any, to the Company or as otherwise required by law.

SECTION 507. *Limitation on Suits.*

No Holder of any Notes shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless

(1) such Holder has previously given written notice to the Trustee of a continuing Event of Default;

(2) the Holders of not less than 25% in principal amount of the Outstanding Notes shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder;

(3) such Holder or Holders have offered to the Trustee reasonable indemnity against the costs, expenses and liabilities (including fees and expenses of its agents and counsel) to be incurred in compliance with such request;

(4) the Trustee for 60 days after its receipt of such notice, request and offer of indemnity has failed to institute any such proceeding; and

(5) no direction inconsistent with such written request has been given to the Trustee

during such 60-day period by the Holders of not less than a majority in the aggregate principal amount of the Outstanding Notes;

it being understood and intended that no one or more Holders shall have any right in any manner whatever by virtue of, or by availing of, any provision of this Indenture to affect, disturb or prejudice the rights of any other Holders, or to obtain or to seek to obtain priority or preference over any other Holders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and ratable benefit of all the Holders.

SECTION 508. *Unconditional Right of Holders to Receive Principal, Premium, Interest and Additional Amounts.*

Notwithstanding any other provision in this Indenture, the Holder of any Note shall have the right, which is absolute and unconditional, to receive payment, as provided herein (including, if applicable, Article Twelve) and in such Note of the principal of (and premium, if any) and (subject to Section 309) interest on and Additional Amounts, if any, in respect of such Note on the respective Stated Maturities expressed in such Note (or, in the case of redemption, on the Redemption Date) and to institute suit for the enforcement of any such payment, and such rights shall not be impaired without the consent of such Holder.

SECTION 509. *Restoration of Rights and Remedies.*

If the Trustee or any Holder has instituted any proceeding to enforce any right or remedy under this Indenture and such

proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then and in every such case, subject to any determination in such proceeding, the Company, the Trustee and the Holders shall be restored severally and respectively to their former positions hereunder and thereafter all rights and remedies of the Trustee and the Holders shall continue as though no such proceeding had been instituted.

SECTION 510. *Rights and Remedies Cumulative.*

Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Notes in the last paragraph of Section 308, no right or remedy herein conferred upon or reserved to the Trustee or to the Holders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

SECTION 511. *Delay or Omission Not Waiver.*

No delay or omission of the Trustee or of any Holder of any Note to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article or by law to the Trustee or to the Holders may be

exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Holders, as the case may be.

SECTION 512. *Control by Holders.*

Subject to the provisions of Section 602(5), the Holders of not less than a majority in the aggregate principal amount of the Outstanding Notes shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee, *provided* that

(1) such direction shall not be in conflict with any rule of law or with this Indenture or the Security Documents,

(2) the Trustee may take any other action deemed proper by it which is not inconsistent with such direction, and

(3) the Trustee need not take any action which might subject it to personal liability or be unjustly prejudicial to the Holders not consenting.

SECTION 513. *Waiver of Past Defaults.*

The Holders of not less than a majority in aggregate principal amount of the Outstanding Notes may on behalf of the Holders of all the Notes waive any past default hereunder and under the Notes and its consequences, except a Default

(1) in respect of the payment of the principal of, premium, if any, interest or Additional Amounts, if any, in respect of any Note, or

(2) in respect of a covenant or provision hereof which under Article Nine cannot be modified or amended without the consent of the Holder of each Outstanding Note affected.

Upon any such waiver, such default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Indenture and the Notes; but no such waiver shall extend to any subsequent or other default or Event of Default or impair any right consequent thereon.

SECTION 514. *Waiver of Stay or Extension Laws.*

The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture; and the Company (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

Appendix C

SECTION 515. *Judgment Currency.*

The obligations of the Company to any Holder of Notes under this Indenture or the Notes shall, to the extent permitted by applicable law, notwithstanding any judgment in a currency (the "Judgment Currency") other than U.S. Dollars (the "Agreement Currency"), be discharged only to the extent that on the day following receipt by such Holder of Notes or the Trustee, as the case may be, of any amount in the Judgment Currency, such Holder of Notes or the Trustee, as the case may be, may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the amount originally to be paid to such Holder of Notes or the Trustee, as the case may be, in the Agreement Currency, the Company agrees, as a separate obligation and notwithstanding such judgment, to pay the difference and if the amount of the Agreement Currency so purchased exceeds the amount originally to be paid to such Holder of Notes or the Trustee, as the case may be, such Holder of Notes or the Trustee, as the case may be, agrees to pay to or for the account of the Company such excess, *provided* that such Holder of Notes or the Trustee, as the case may be, shall not have any obligation to pay any such excess as long as a Default by the Company in its obligations under the Notes or this Indenture has occurred and is continuing, in which case such excess shall be applied by such Holder of Notes or the Trustee, as the case may be, to such obligations.

Appendix C

ARTICLE SIX

THE TRUSTEE

SECTION 601. *Notice of Defaults.*

Within 30 days after the occurrence of any Default hereunder, the Trustee shall transmit in the manner and to the extent provided in TIA Section 313(c), notice of such Default hereunder known to the Trustee, unless such Default shall have been cured or waived; *provided, however,* that, except in the case of a Default in the payment of the principal of (or premium, if any) or interest on or Additional Amounts, if any, in respect of any Note or in the making of a mandatory redemption, the Trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee or a trust committee of directors and/or Responsible Officers of the Trustee in good faith determines that the withholding of such notice is in the interest of the Holders; and *provided further* that in the case of any Default of the character specified in Section 501(5) no such notice to Holders shall be given until at least 30 days after the occurrence thereof.

SECTION 602. *Certain Rights of Trustee.*

Subject to the provisions of TIA Section 315(a) through 315(d):

(1) the Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request,

direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(2) any request or direction of the Company mentioned herein shall be sufficiently evidenced by a Company Request or Company Order and any resolution of the Board of Directors may be sufficiently evidenced by a Board Resolution;

(3) whenever in the administration of this Indenture or any Security Document the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may require and, in the absence of bad faith on its part, rely upon an Officer's Certificate;

(4) the Trustee may consult with counsel and the written advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder or any Security Document in good faith and in reliance thereon;

(5) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture or any Security Document at the request or direction of any of the Holders pursuant to this Indenture, unless such Holders shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction;

(6) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document and may conclusively rely as to the truth of the statements and correctness of the opinions stated therein, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney, upon reasonable notice and during regular business hours;

(7) the Trustee may execute any of the trusts or powers hereunder or any Security Document or perform any duties hereunder either directly or by or through agents or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder; and

(8) the Trustee shall not be liable for any action taken, suffered or omitted by it in good faith and believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture or any Security Document.

(9) in no event whatsoever shall the Trustee be liable for special, indirect or consequential loss or damage of any kind whatever (including but not limited to lost profits), even if the Trustee has been advised of the likelihood of such loss or damages and regardless of the form of action.

The Trustee shall not be required to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or any Security Document, or in the exercise of any of its rights or powers hereunder or any Security Document if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

Except as otherwise specifically provided in this Indenture, (i) all references in this Indenture to the Trustee shall be deemed to refer to the Trustee in its capacity as Trustee and in its capacities as Note Registrar, Collateral Agent and Paying Agent and (ii) every provision of this Indenture relating to the conduct or affecting the liability or offering protection, immunity or indemnity to the Trustee shall be deemed to apply with the same force and effect to the Trustee acting in its capacities as Paying Agent, Collateral Agent and Note Registrar and to each other Paying Agent.

The Trustee shall not, under any circumstances, have any liability with respect to the validity or perfection of any security interest purported to be created by this Indenture or any Security Document.

SECTION 603. *Trustee Not Responsible for Recitals or Issuance of Notes.*

The recitals contained herein and in the Notes, except for the Trustee's certificate of authentication, shall be taken as the statements of the Company, and the Trustee assumes no responsibility for their correctness. The Trustee makes

no representations as to the validity or sufficiency of this Indenture or of the Notes, except that the Trustee represents that it is duly authorized to execute and deliver this Indenture, authenticate the Notes and perform its obligations hereunder and that the statements made by it in any Statement of Eligibility on Form T-1 supplied to the Company will be true and accurate, subject to the qualifications set forth therein. The Trustee shall not be accountable for the use or application by the Company of Notes or the proceeds thereof.

SECTION 604. *May Hold Notes.*

The Trustee, any Paying Agent, any Note Registrar or any other agent of the Company or of the Trustee, in its individual or any other capacity, may become the owner or pledgee of Notes and, subject to TIA Sections 310(b) and 311, may otherwise deal with the Company with the same rights it would have if it were not Trustee, Collateral Agent, Paying Agent, Note Registrar or such other agent.

SECTION 605. *Money Held in Trust.*

Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any money received by it hereunder except as otherwise agreed in writing with the Company.

SECTION 606. *Compensation and Reimbursement.*

The Company agrees:

(1) to pay to the Trustee and each other Paying Agent from time to time compensation as

the Company and the Trustee or each other Paying Agent, as the case may be, shall agree in writing for all services rendered by it hereunder and under the Security Documents (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(2) except as otherwise expressly provided herein, to reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee and each other Paying Agent in accordance with any provision of this Indenture or under the Security Documents (including the reasonable compensation and the expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to its gross negligence or wilful misconduct; and

(3) to indemnify the Trustee, any person in whose name any Security Assets (as defined in the Mortgage of Shares) are registered and each other Paying Agent for, and to hold it harmless against, any loss, liability or expense (including the reasonable compensation and expenses of its counsel and other Persons not regularly in its employ) incurred without gross negligence or wilful misconduct on its part, arising out of or in connection with the acceptance or administration of this trust under this Indenture or in respect of the performance of its duties as the Collateral

Agent under the Security Documents, including the costs and expenses of investigating or defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder or thereunder.

The obligations of the Company under this Section to compensate the Trustee, to pay or reimburse the Trustee for expenses, disbursements and advances and to indemnify and hold harmless the Trustee shall constitute additional indebtedness hereunder and shall survive the satisfaction and discharge of this Indenture. As security for the performance of such obligations of the Company, the Trustee shall have a lien prior to the Notes upon all property and funds held or collected by the Trustee as such, except funds held in trust for the payment of principal of (and premium, if any), interest on or Additional Amounts, if any, in respect of particular Notes.

The provisions of this Section shall survive the resignation or removal of the Trustee and the termination of this Indenture.

SECTION 607. *Corporate Trustee Required; Eligibility*

There shall be at all times a Trustee hereunder which shall be eligible to act as Trustee under TIA Section 310(a)(1) and which shall have a combined capital and surplus of at least US$50,000,000. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of federal, state, territorial or District of Columbia supervising or examining authority, then for the

purposes of this Section, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

SECTION 608. *Resignation And Removal; Appointment of Successor.*

(a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article shall become effective until the acceptance of appointment by the successor Trustee in accordance with the applicable requirements of Section 609.

(b) The Trustee may resign at any time by giving written notice thereof to the Company. If the instrument of acceptance by a successor Trustee required by Section 609 shall not have been delivered to the Trustee within 30 days after the giving of such notice of resignation, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee.

(c) The Trustee may be removed at any time by Act of the Holders of not less than a majority in principal amount of the Outstanding Notes, delivered to the Trustee and to the Company.

(d) If at any time:

(1) the Trustee shall fail to comply with the provisions of TIA Section 310(b) after written request therefor by the Company or by any Holder who has been a bona fide Holder of a Note for at least six months, or

(2) the Trustee shall cease to be eligible under Section 607 and shall fail to resign after written request therefor by the Company or by any Holder who has been a bona fide Holder of a Note for at least six months, or

(3) the Trustee shall become incapable of acting or shall be adjudged a bankrupt or insolvent or a receiver of the Trustee or of its property shall be appointed or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in any such case, (i) the Company, by a Board Resolution, may remove the Trustee, or (ii) subject to TIA Section 315(e), any Holder who has been a bona fide Holder of a Note for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(e) If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office

of Trustee for any cause, the Company, by a Board Resolution, shall promptly appoint a successor Trustee. If, within one year after such resignation, removal or incapability, or the occurrence of such vacancy, a successor Trustee shall be appointed by Act of the Holders of a majority in principal amount of the Outstanding Notes delivered to the Company and the retiring Trustee, the successor Trustee so appointed shall, forthwith upon its acceptance of such appointment, become the successor Trustee and supersede the successor Trustee appointed by the Company. If no successor Trustee shall have been so appointed by the Company or the Holders and accepted appointment in the manner hereinafter provided subject to TIA Section 315(e), any Holder who has been a bona fide Holder of a Note for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee.

(f) The Company shall give notice of each resignation and each removal of the Trustee and each appointment of a successor Trustee to the Holders of Notes in the manner provided for in Section 106. Each notice shall include the name of the successor Trustee and the address of its Corporate Trust Office.

SECTION 609. *Acceptance of Appointment by Successor.*

Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to the Company and to the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor

Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee; but, on request of the Company or the successor Trustee, such retiring Trustee shall, upon payment of its charges, execute and deliver an instrument transferring to such successor Trustee all the rights, powers and trusts of the retiring Trustee and shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder. Upon request of any such successor Trustee, the Company shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all such rights, powers and trusts.

No successor Trustee shall accept its appointment unless at the time of such acceptance such successor Trustee shall be qualified under TIA Section 310(b) and eligible under this Article.

SECTION 610. *Merger, Conversion, Consolidation or Succession to Business.*

Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, *provided* such corporation shall be otherwise qualified and eligible under this Article, without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any Notes shall have

been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Trustee may adopt such authentication and deliver the Notes so authenticated with the same effect as if such successor Trustee had itself authenticated such Notes. In case any of the Notes shall not have been authenticated by such predecessor Trustee, any successor Trustee may authenticate such Notes either in the name of any predecessor hereunder or in the name of the successor Trustee. In all such cases such certificates shall have the full force and effect that this Indenture provides for the certificate of authentication of the Trustee, *provided, however,* that the right to adopt the certificate of authentication of any predecessor Trustee or to authenticate Notes in the name of any predecessor Trustee shall apply only to its successor or successors by merger, conversion or consolidation.

ARTICLE SEVEN

HOLDERS' LISTS AND REPORTS BY TRUSTEE

SECTION 701. *Disclosure of Names and Addresses of Holders.*

Every Holder of Notes, by receiving and holding the same, agrees with the Company and the Trustee that none of the Company or the Trustee or any agent of either of them shall be held accountable by reason of the disclosure of any such information as to the names and addresses of the Holders in accordance with TIA Section 312, regardless of the source from which such information was derived, and that the Trustee shall not be held accountable by reason of mailing any material pursuant to a request made under TIA Section 312(b).

SECTION 702. *Reports by Trustee.*

Within 60 days after May 1 of each year commencing with the first May 1 after the first issuance of Notes, the Trustee shall transmit to the Holders, in the manner and to the extent provided in TIA Section 313(c), a brief report dated as of such May 1 if required by TIA Section 313(a).

ARTICLE EIGHT

CONSOLIDATION, MERGER AND SALE OF ASSETS

SECTION 801. *Company May Consolidate, Etc., Only on Certain Terms.*

The Company shall not, in a single transaction or through a series of related transactions, consolidate with or merge with or into any other Person or sell, assign, convey, transfer, lease or otherwise dispose of all or substantially all of its properties and assets as an entirety to any Person or Persons or permit any Subsidiary to enter into any such transaction or series of transactions if such transaction or series of transactions, in the aggregate, would result in the sale, assignment, conveyance, transfer, lease or other disposition of all or substantially all of the properties and assets of the Company and its Subsidiaries on a consolidated basis to any Person or Persons, unless at the time and immediately after giving effect thereto:

(1) either (A) the Company will be the surviving corporation or (B) the Person (if other than the Company) formed by such consolidation

or into which the Company or the Company and its Subsidiaries is merged or the Person that acquires by sale, conveyance, transfer, lease or other disposition all or substantially all the properties and assets of the Company or the Company and its Subsidiaries, as the case may be (the "Surviving Entity") (i) shall be a corporation organized and validly existing under the laws of the British Virgin Islands or the United States of America, any state thereof or the District of Columbia, and (ii) shall expressly assume, by a supplemental indenture executed and delivered to the Trustee, in form satisfactory to the Trustee, the Company's obligation for the due and punctual payment of the principal of, premium, if any, interest on and Additional Amounts in respect of all the Notes and the performance and observance of every covenant of this Indenture on the part of the Company to be performed or observed;

(2) immediately after giving effect to such transaction or series of transactions on a pro forma basis (and treating any obligation of the Company or any Subsidiary incurred in connection with or as a result of such transaction or series of transactions as having been incurred at the time of such transaction), no Default or Event of Default shall have occurred and be continuing;

(3) if any of the property or assets of the Company or any of its Subsidiaries would thereupon become subject to any Lien, the provisions of Section 1014 are complied with;

(4) the Company shall have obtained a Rating Confirmation; and

(5) the Company or the Surviving Entity shall have delivered to the Trustee, in form and substance reasonably satisfactory to the Trustee, an Officer's Certificate and an Opinion of Counsel, each stating that such consolidation, merger, sale, assignment, conveyance, transfer, lease or other disposition, and if a supplemental indenture is required in connection with such transaction, such supplemental indenture, comply with the requirements of this Indenture and that all conditions precedent therein provided for relating to such transaction have been complied with and that such supplemental indenture is a legal, valid, binding and enforceable obligation of the new obligor, subject to customary exceptions.

SECTION 802. *Successor Substituted.*

Upon any consolidation or merger, or any sale, assignment, conveyance, transfer, lease or other disposition of all or substantially all of the properties and assets of the Company in accordance with Section 801 in which the Company is not the continuing obligor under this Indenture, the Surviving Entity shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture, with the same effect as if such successor had been named as the Company herein. When a successor assumes all the obligations of its predecessor under this Indenture and the Notes, the predecessor shall be released from those obligations; *provided* that in the case of a transfer

by lease, the predecessor shall not be released from the payment of principal, premium, if any, interest on and Additional Amounts in respect of the Notes; *provided* that in the case of a transfer by lease, the predecessor shall not be released from the payment of principal and interest on the Notes.

ARTICLE NINE

SUPPLEMENTAL INDENTURES; AMENDMENTS TO SECURITY DOCUMENTS

SECTION 901. *Supplemental Indentures and Amendments to Security Documents, Without Consent of Holders.*

(a) Without the consent of any Holders, the Company, when authorized by a Board Resolution and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto, in form satisfactory to the Trustee, for any of the following purposes:

(1) to evidence the succession of another Person to the Company, or any other obligor on the Notes and the assumption by any such successor of the covenants of the Company, or such obligor contained herein and in the Notes; or

(2) to add to the covenants of the Company, or any other obligor upon the Notes for the benefit of the Holders or to surrender any right or power herein conferred upon the Company or any other obligor upon the Notes, as applicable, in this Indenture, in the Notes; or

(3) to add any additional Events of Default; or

(4) to evidence and provide the acceptance of the appointment of a successor Trustee under this Indenture; or

(5) to cure any ambiguity, or to correct or supplement any provision in this Indenture or in the Notes which may be defective or inconsistent with any other provision in this Indenture or in the Notes, or to make any other provisions with respect to matters or questions arising under this Indenture or under the Notes which shall not be inconsistent with the provisions of this Indenture or the Notes; *provided* that, in each case, such provisions shall not materially adversely affect the interests of the Holders; or

(6) to mortgage, pledge, hypothecate or grant a security interest in favor of the Trustee for the benefit of the Holders of the Notes as additional security for the payment and performance of the Company's obligations under this Indenture, in any property, or assets, including any of which are required to be mortgaged, pledged or hypothecated, or in which a security interest is required to be granted to the Trustee pursuant to this Indenture or otherwise; or

(7) to comply with the requirements of the Commission or the TIA in order to effect or maintain the qualification of this Indenture under the TIA; or

(b) Without the consent of any Holders, the Grantor under the respective Security Documents and the Trustee at any time and from time to time, may enter into any amendment to, or waive any provision of, any Security Document to cure any ambiguity, or to correct or supplement any provision thereof which may be defective or inconsistent with any other provision contained therein or herein or to convey, transfer, assign, mortgage or pledge to the Trustee any additional security thereunder.

SECTION 902. *Supplemental Indentures with Consent of Holders: Amendments to Security Documents.*

(a) With the consent of the Holders of not less than a majority in principal amount of the Outstanding Notes, by Act of said Holders delivered to the Company and the Trustee, (i) the Company, when authorized by a Board Resolution, and the Trustee may enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of modifying in any manner the rights of the Holders under this Indenture or of waiving compliance with certain restrictive covenants and provisions under this Indenture and (ii) the Trustee may agree to any amendment, modification, or waiver of any Security Document and any cancellation, termination, amendment or modification of (x) any Specified Agreement (as defined in each Collateral Assignment Agreement) or (y) the Management Services Agreement; *provided, however,* that no such supplemental indenture, amendment, modification or waiver shall, without the consent of the Holder of each Outstanding Note affected thereby:

(1) change the Stated Maturity of the principal of, or any installment of interest on, any Note, or reduce the principal amount thereof or the rate of interest thereon or any premium payable upon the redemption thereof, or change the coin or currency in which the principal of any Note or any premium or the interest thereon is payable, or impair the right to institute suit for the enforcement of any such payment after the Stated Maturity thereof (or, in the case of redemption, on or after the Redemption Date); or,

(2) reduce the percentage in principal amount of the Outstanding Notes, the consent of whose Holders is required for any such supplemental indenture, or the consent of whose Holders is required for any waiver of compliance with certain provisions of this Indenture or certain defaults hereunder and their consequences provided for in this Indenture; or

(3) change the obligation of the Company to pay Additional Amounts; or

(4) permit the release or termination of all or substantially all of the security afforded by the Liens under this Indenture and the Security Documents; or

(5) modify any of the provisions relating to supplemental indentures requiring the consent of holders or relating to the waiver of past defaults

or relating to the waiver of certain covenants, except to increase the percentage of Outstanding Notes required for such actions or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Note affected thereby; or

(6) amend, change or modify the obligation of the Company to make and consummate a Change of Control Offer in the event of a Change of Control in accordance with Section 1015 of this Indenture, including amending, changing or modifying any definition relating thereto; or

(7) except as otherwise permitted in this Indenture, consent to the assignment or transfer by the Company of any of its rights or obligations under this Indenture.

(b) With the consent or at the direction of the Holders of not less than 66⅔% in principal amount of the Outstanding Notes, the Trustee may agree to the creation of any Lien on the Collateral or any part thereof or release or terminate any part of the Liens of the Collateral Agent, *provided* that, so long as the Indenture shall not have been discharged, the Trustee shall not permit the release or termination of all or substantially all of the Liens of the Trustee on the Collateral or deprive the Holders of substantially all of the security afforded by the Liens of the Indenture or the Security Documents without the consent of the Holder of each Note Outstanding.

It shall not be necessary for any Act of Holders under this Section to approve the particular form of any proposed supplemental indenture or any amendment, modification or waiver of any Security Document, Specified Agreement or the Management Services Agreement, but it shall be sufficient if such Act shall approve the substance thereof.

SECTION 903. *Execution of Supplemental Indentures.*

In executing, or accepting the additional trusts created by, any supplemental indenture permitted by this Article or the modifications thereby of the trusts created by this Indenture or any amendment, waiver or modification of any document described in Section 902(b), the Trustee shall be entitled to receive, and shall be fully protected in relying upon, an Opinion of Counsel stating that the execution of such supplemental indenture, amendment, modification or waiver is authorized or permitted by this Indenture or such Security Document, as the case may be. The Trustee may, but shall not be obligated to, enter into any such supplemental indenture, amendment, modification or waiver which affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

SECTION 904. *Effect of Supplemental Indentures; Amendments to Security Documents.*

Upon the execution of any supplemental indenture, amendment, modification or waiver under this Article, this Indenture or the applicable Security Document shall be modified in accordance therewith, and such supplemental indenture, amendment, modification or waiver shall form a

part of this Indenture or applicable Security Document, as the case may be, for all purposes; and every Holder of Notes theretofore or thereafter authenticated and delivered hereunder shall be bound thereby (except as provided in Section 902).

SECTION 905. *Conformity with Trust Indenture Act.*

Every supplemental indenture executed pursuant to this Article shall conform to the requirements of the Trust Indenture Act as then in effect.

SECTION 906. *Reference in Notes to Supplemental Indentures.*

Notes authenticated and delivered after the execution of any supplemental indenture pursuant to this Article may, and shall if required by the Trustee, bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Notes so modified as to conform, in the opinion of the Trustee and the Company, to any such supplemental indenture may be prepared and executed by the Company and authenticated and delivered by the Trustee in exchange for outstanding Notes. Failure to make the appropriate notation or to issue a new Note shall not affect the validity of such amendment.

SECTION 907. *Notice of Supplemental Indentures.*

Promptly after the execution by the Company and the Trustee of any supplemental indenture, amendment, modification or waiver pursuant to the provisions of

Section 902, the Trustee shall give notice thereof to the Holders of each Outstanding Note affected, in the manner provided for in Section 106, setting forth in general terms the substance of such supplemental indenture, amendment, modification or waiver. Failure to provide such notice shall not affect the validity of such amendment.

ARTICLE TEN

COVENANTS

SECTION 1001. *Payment of Principal, Premium, if any, and Interest and Additional Amounts, if any.*

The Company covenants and agrees for the benefit of the Holders that it shall duly and punctually pay the principal of (and premium, if any) and interest (including Additional Interest, if any) and Additional Amounts, if any, on the Notes in accordance with the terms of the Notes and this Indenture.

SECTION 1002. *Maintenance of Office or Agency.*

The Company shall maintain in The City of New York an office or agency where Notes may be presented or surrendered for payment, where Notes may be surrendered for registration of transfer or exchange and where notices and demands to or upon the Company in respect of the Notes and this Indenture may be served. The Corporate Trust Office of the Trustee shall be such office or agency of the Company, unless the Company shall designate and maintain some other office or agency for one or more of such purposes. The Company shall give prompt written notice to the Trustee of

any change in the location of any such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee, and the Company hereby appoints the Trustee as its agent to receive all such presentations, surrenders, notices and demands. For so long as the Notes are listed on the Luxembourg Stock Exchange the Company shall maintain a paying agent for the Notes in Luxembourg.

The Company may also from time to time designate one or more other offices or agencies (in or outside of The City of New York) where the Notes may be presented or surrendered for any or all such purposes and may from time to time rescind any such designation; *provided, however,* that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in The City of New York for such purposes. The Company shall give prompt written notice to the Trustee of any such designation or rescission and any change in the location of any such other office or agency.

SECTION 1003. *Money for Note Payments to Be Held in Trust.*

If the Company shall at any time act as its own Paying Agent, it will, on or before each due date of the principal of (or premium, if any), interest or Additional Amounts, if any, on any of the Notes, segregate and hold in trust for the benefit of the Persons entitled thereto a sum sufficient to pay the principal of (or premium, if any) or interest or Additional

Amounts, if any, so becoming due until such sums shall be paid to such Persons or otherwise disposed of as herein provided and will promptly notify the Trustee of its action or failure so to act.

Whenever the Company shall have one or more Paying Agents for the Notes, it will, one Business Day prior to each due date of the principal of (or premium, if any) or interest or Additional Amounts, if any, on any Notes, deposit with a Paying Agent a sum sufficient to pay the principal (and premium, if any) or interest or Additional Amounts, if any, so becoming due, such sum to be held in trust for the benefit of the Persons entitled to such principal, premium or interest or Additional Amounts, if any, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee of such action or any failure so to act.

The Company will cause each Paying Agent (other than the Trustee) to execute and deliver to the Trustee an instrument in which such Paying Agent shall agree with the Trustee, subject to the provisions of this Section, that such Paying Agent will:

(1) hold all sums held by it for the payment of the principal of (and premium, if any) or interest or Additional Amounts, if any, on Notes in trust for the benefit of the Persons entitled thereto until such sums shall be paid to such Persons or otherwise disposed of as herein provided;

(2) give the Trustee notice of any default by the Company (or any other obligor upon the Notes)

in the making of any payment of principal (and premium, if any) or interest or Additional Amounts, if any; and

(3) at any time during the continuance of any such default, upon the written request of the Trustee, forthwith pay to the Trustee all sums so held in trust by such Paying Agent.

The Company may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture or for any other purpose, pay, or by Company Order direct any Paying Agent to pay, to the Trustee all sums held in trust by the Company or such Paying Agent, such sums to be held by the Trustee upon the same trusts as those upon which such sums were held by the Company or such Paying Agent; and, upon such payment by any Paying Agent to the Trustee, such Paying Agent shall be released from all further liability with respect to such sums.

Any money deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment of the principal of (or premium, if any) or interest or Additional Amounts, if any, on any Note and remaining unclaimed for two years after such principal, premium or interest or Additional Amounts, if any, has become due and payable shall be paid to the Company on Company Request, or (if then held by the Company) shall be discharged from such trust; and the Holder of such Note shall thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of

the Company as trustee thereof, shall thereupon cease; *provided, however,* that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Company cause to be published once, in a newspaper published in the English language, customarily published on each Business Day and of general circulation in the Borough of Manhattan, The City of New York, notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such publication, any unclaimed balance of such money then remaining will be repaid to the Company.

SECTION 1004. *Corporate Existence.*

Subject to Article Eight, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence and the rights (charter and statutory) and franchises of the Company and each Subsidiary of the Company; *provided, however,* that the Company shall not be required to preserve any such right or franchise if the Board of Directors shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company and its Subsidiaries as a whole and that the loss thereof is not disadvantageous in any material respect to the Holders.

SECTION 1005. *Payment of Taxes.*

The Company shall, and shall cause its Subsidiaries to, pay and discharge when due and payable all taxes imposed on it or on its income or profits or on any of its properties except such taxes as are being contested in good faith in appropriate proceedings.

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SECTION 1006. *Maintenance of Properties.*

The Company will cause all properties owned by the Company or any Subsidiary of the Company or used or held for use in the conduct of its business or the business of any such Subsidiary to be maintained and kept in good condition, repair and working order and supplied with all necessary equipment and will cause to be made all necessary repairs, renewals, replacements, betterments and improvements thereof, all as in the judgment of the Company may be necessary so that the business carried on in connection therewith may be properly and advantageously conducted at all times; *provided*, *however,* that nothing in this Section shall prevent the Company or any Subsidiary of the Company from discontinuing the maintenance of any of such properties if such discontinuance is, in the judgment of the Company or such Subsidiary, desirable in the conduct of the business of the Company and its Subsidiaries as a whole and not disadvantageous in any material respect to the Holders.

SECTION 1007. *Maintenance of Insurance.*

The Company will cause each of the Project Toll Road Joint Ventures to maintain insurance policies covering such risks, and in such amounts and with such terms as are normally carried by similarly situated foreign invested companies engaged in the construction, ownership, operation and maintenance of toll roads in the Peoples' Republic of China and to provide the Trustee with evidence of such insurance on an annual basis, which evidence shall be in the form of an Officer's Certificate certifying as to the compliance with this Section 1007.

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SECTION 1008. *Statement by Officers As to Default.*

(a) The Company will deliver to the Trustee, within 180 days after the end of each fiscal year and 90 days after the end of each fiscal semiannual period, a brief certificate from the principal executive officer, principal financial officer or principal accounting officer, as to his or her knowledge of the Company's compliance with all conditions and covenants under this Indenture. For purposes of this Section 1008(a), such compliance shall be determined without regard to any period of grace or requirement of notice under this Indenture.

(b) When any Default or Event of Default has occurred and is continuing under this Indenture, the Company shall deliver to the Trustee by registered or certified mail or by telegram, telex or facsimile transmission an Officer's Certificate specifying such event, notice or other action within five Business Days of its occurrence.

SECTION 1009. *Provision of Reports and Financial Statements.*

(a) If the Company is subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, the Company shall submit to the Commission for filing and provide to the Trustee, and, upon request, the Company directly or through the Trustee will provide to the Holders, (i) as soon as available after the end of each fiscal year (but in no event later than 180 days after the close of such fiscal year), annual reports on Form 20-F, including annual consolidated financial statements prepared in accordance with GAAP with an opinion thereon by an internationally

recognized independent public accountant with respect to such year in English, (ii) as soon as available (and in any event, no more than 90 days after the end of each semiannual period), interim consolidated reports, including financial statements (containing a balance sheet, income statement and cash flows statement) prepared in accordance with GAAP for and as of the end of each semiannual interim period covered thereby with comparable financial statements for the comparable period of the immediately preceding fiscal year, in English, and (iii) U.S. GAAP reconciliations for the consolidated financial statements contained in such annual reports on Form 20-F. The Company will also comply with the other provisions of Section 314(a) of the TIA. Such annual and interim reports shall be obtainable at the offices of the Paying Agent in Luxembourg.

(b) At any time when the Company is not subject to Section 13 or 15(d) of the Exchange Act, the Company shall file with the Trustee and upon request, the Company directly or through the Trustee will provide to the Holders of the Notes, such periodic information, documents, financial information and reports as it would be required to file with the Commission to the same extent and on the same basis as if it were subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act and as provided in the foregoing paragraph.

(c) At any time when the Company is not subject to Section 13 or 15(d) of the Exchange Act and is not exempt from reporting pursuant to Rule 12g3-2(b) under the Exchange Act, upon the request of a Holder or beneficial owner of a Note, the Company shall promptly furnish or cause to be furnished Rule 144A Information (as defined below)

to such holder or beneficial owner, to a prospective purchaser of such Note designated by such Holder or beneficial owner or to the Trustee for delivery to such Holder or beneficial owner or a prospective purchaser designated by such Holder or beneficial owner, as the case may be, in order to permit compliance by such Holder or beneficial owner with Rule 144A in connection with the resale of such Note by such Holder or beneficial owner. "Rule 144A Information" shall be such information as is at the time of such proposed purchase specified pursuant to Rule 144A(d)(4) (or any successor provision thereto).

SECTION 1010. *Limitation on Indebtedness.*

The Company will not, and will not permit any Non-Project Toll Road Joint Venture (until after the Non-Project Spin-off Date) or any Restricted Subsidiary, directly or indirectly, to Incur any Indebtedness. Notwithstanding the foregoing, the Company, the Non-Project Toll Road Joint Ventures and the Restricted Subsidiaries, as the case may be, may Incur the following Indebtedness:

(1) Indebtedness of the Company pursuant to the Notes or the Exchange Notes;

(2) Indebtedness of the Company owing to the Holding Company and Incurred as a result of a Capital Contribution as contemplated by Section 1017;

(3) Indebtedness of the Company, any Non-Project Toll Road Joint Venture or any

Restricted Subsidiary owing to the Company or to a Wholly Owned Subsidiary; *provided* that (a) any disposition, pledge or transfer of any such Indebtedness to a Person (other than a disposition, pledge or transfer to the Company or a Wholly Owned Subsidiary of the Company) shall be deemed to be an Incurrence of such Indebtedness not permitted by this clause (3); and (b) any transaction pursuant to which any Wholly Owned Subsidiary of the Company, to which such Indebtedness is owed, ceases to be a Wholly Owned Subsidiary of the Company shall be deemed to be an Incurrence of such Indebtedness that is not permitted by this clause (3);

(4) Obligations of the Company, any Non-Project Toll Road Joint Venture or any Restricted Subsidiary entered into in the ordinary course of business (a) pursuant to Interest Rate Agreements, which obligations do not exceed the aggregate principal amount of Indebtedness of the Company, the Non-Project Toll Road Joint Ventures and the Restricted Subsidiaries, as the case may be, covered by such Interest Rate Agreements, and (b) pursuant to Exchange Rate Contracts entered into by the Company, any Non-Project Toll Road Joint Venture or any of the Restricted Subsidiaries in respect of its (x) assets or (y) obligations, as the case may be, denominated in a foreign currency, which obligations do not increase the aggregate principal amount of any Indebtedness of the Company, the Non-Project Toll Road Joint

Ventures or the Restricted Subsidiaries, as the case may be, covered by such Exchange Rate Contracts, *provided* that, with respect to both clauses (a) and (b) above, neither the Non-Project Toll Road Joint Ventures nor any of the Restricted Subsidiaries may enter into any Interest Rate Agreements or Exchange Rate Contracts other than in respect of their own assets or Indebtedness for which they are the primary obligor;

(5) Indebtedness of any Toll Road Joint Venture owing to any holder of an equity interest. therein (other than a Hong Kong Holding Company) pursuant to the applicable Joint Venture Contract as in effect on the Issue Date; and

(6) Subordinated Indebtedness of Company, which Subordinated Indebtedness shall have a Stated Maturity after the Stated Maturity of the Notes and shall not allow any payment of principal or any sinking fund payment thereon until all obligations of the Company under the Notes shall have been paid in full, *provided* that the Company may only Incur such Subordinated Indebtedness if (a) the net proceeds of such Subordinated Indebtedness are applied to the making of an Additional Joint Venture Capital Contribution within 20 days of the date such Subordinated Indebtedness was Incurred, (b) the creditors in connection with such Subordinated Indebtedness shall have entered into a subordination agreement substantially in the form attached hereto as Exhibit D, and (c) at the

time of Incurrence of such Subordinated Indebtedness, the Company would be permitted to make a Restricted Payment in accordance with Paragraph (a) under Section 1011, *provided, however,* that for purposes only of determining whether the Company may Incur Subordinated Indebtedness pursuant to this clause (6), the Debt Service Coverage Ratio referred to in sub-clause (a)(ii) under Section 1011 shall be not less than 1.75 to 1.

SECTION 1011. *Limitation on Restricted Payments.*

(a) The Company will not, and will not permit any Restricted Subsidiary to, directly or indirectly, make any Restricted Payment unless, at the time of such action and after giving effect thereto, (i) no Default or Event of Default shall have occurred and be continuing or would result therefrom, (ii) the Debt Service Coverage Ratio is not less than 2.25 to 1 as of the most recent Determination Date, (iii) the aggregate amount on deposit in the Interest Payment Account shall be not less than the aggregate amount of interest (including Additional Interest, if any) due and payable on the Notes within 365 days following the most recent Determination Date, and (iv) there shall be on deposit in the Note Redemption Account an amount sufficient to redeem the aggregate principal amount of Notes required to be redeemed within 365 days following the most recent Determination Date, provided that if the Company has met the requirements to make a Restricted Payment pursuant to this Section 1011, the Company may make such Restricted Payment at any time during the period from the Calculation

Date after the most recent Determination Date until the next Determination Date. Notwithstanding the foregoing, the Company will not, and will not permit any Restricted Subsidiary to, directly or indirectly, make any Restricted Payment until each of the following has occurred: (a) the Non-Project Spin-off Date; (b) each of the Project Toll Road Joint Ventures has installed a computerized ticketing system in accordance with, and obtained the certification described in, Section 1024; (c) if the audit report referred to in Section 1022 relating to the Project Toll Road Joint Ventures' toll collection systems refers to any material deficiencies in such toll collection systems, the Trustee shall have received a revised audit report stating that all such deficiencies have been corrected and that no material deficiencies exist on the date of such revised audit report; (d) if the "bring-down" engineer's report referred to in Section 1022 refers to any material repairs to the toll roads operated by the Project Toll Road Joint Ventures which should be made, the Trustee shall have received an engineer's report concluding that all such repairs have been made; (e) in the event that the Guanlong Highway is not completed, collecting tolls and open to traffic along its full length by July 1998, such time as the Guanlong Highway is so completed, collecting tolls and open to traffic; and (f) in the event that the Meishan Expressway is not completed, collecting tolls and open to traffic along its full length by August 1999, such time as the Meishan Expressway is so completed, collecting tolls and open to traffic.

(b) Notwithstanding paragraph (a) above, the Company and any Restricted Subsidiary may take the following actions so long as (in the case of clauses (3) and (4) below) no Default or Event of Default shall have occurred and be continuing or would result therefrom:

(1) the Company may cause its Wholly Owned Subsidiaries to transfer all of the Capital Stock representing their interests in the Non-Project Toll Road Joint Ventures in accordance with Section 1023;

(2) the Company may direct the Trustee to distribute out of the Joint Venture Distribution Account as a dividend to the Holding Company an aggregate amount not greater than the aggregate amount of distributions from the Non-Project Toll Road Joint Ventures made to the Hong Kong Holding Companies and deposited in the Joint Venture Distribution Account;

(3) the Company or any Wholly Owned Subsidiary may make an Investment in any of the Project Toll Road Joint Ventures (by way of any direct or indirect advance, loan or other extension of credit or any purchase or acquisition of any Capital Stock in such Project Toll Road Joint Ventures) to the extent such Investments are required under the applicable Joint Venture Contract as in effect on the Issue Date and are paid in accordance with the terms thereof; *provided* that to the extent that such Investment is made with funds from the Joint Venture Distribution Account, such Investment shall be made within 20 days after withdrawal from the Joint Venture Distribution Account of such funds;

(4) the Company may withdraw amounts remaining in the Construction Funding Account pursuant to the terms described under Section 1305;

(5) (a) each of the Project Toll Road Joint Ventures and the Hong Kong Holding Companies may make distributions, pay dividends, and pay interest and principal on Indebtedness owing to the Hong Kong Holding Companies or the Company, as the case may be, in accordance with the terms of the applicable Joint Venture Contract as in effect on the Issue Date, which distributions, dividends, interest and principal shall be deposited into the Joint Venture Distribution Account in accordance with the terms of the applicable Security Documents, and (b) each of the Project Toll Road Joint Ventures may make distributions, pay dividends, and pay interest and principal on Indebtedness to the Chinese partner of the Joint Venture in accordance with the terms of the applicable Joint Venture Contract as in effect on the Issue Date; and

(6) any Restricted Subsidiary may pay, distribute, reimburse or otherwise transfer any amount to the Company or any Wholly Owned Subsidiary.

SECTION 1012. *Limitation on Restrictions on Distributions from Restricted Subsidiaries.*

Other than pursuant to this Indenture, the Company will not, and will not permit any Restricted Subsidiary to, create

or otherwise cause or permit to exist or become effective any consensual encumbrance or restriction on the ability of any such Restricted Subsidiary to (i) pay dividends or make any other distributions on its Capital Stock or pay any Indebtedness or other obligation owed to the Company or any other Subsidiary of the Company, (ii) make any loans or advances to the Company or any other Subsidiary of the Company, or (iii) transfer any of its property or assets to the Company or any other Subsidiary of the Company.

SECTION 1013. *Limitation on Transactions with Affiliates*.

The Company shall not, and shall not permit any Restricted Subsidiary to, directly or indirectly conduct any business or enter into or permit to exist any transaction or series of similar or related transactions (including the purchase, conveyance, disposition sale, lease or exchange of any property, the rendering of any service or the extension of credit) with any Affiliate of the Company or the Restricted Subsidiary, as the case may be (other than a Wholly Owned Subsidiary or an employee stock ownership plan for the benefit of the Company's employees), except:

(a) in the ordinary course of the Company's or such Restricted Subsidiary's business and on terms no less favorable to the Company or such Restricted Subsidiary than would be obtainable at the time by the Company or such Restricted Subsidiary, as the case may be, for a comparable transaction or series of similar or related transactions in arm's-length dealings with an unrelated third Person ("Equally Favorable Terms"); or

(b) not in the ordinary course of the Company's or such Restricted Subsidiary's business if (i) the terms of such business, transaction or series of transactions are set forth in writing, and (ii)(x) with respect to any such business, transaction or series of similar or related transactions, a majority of the Board of Directors has, by resolution, determined in good faith that such business, or transaction or series of similar or related transactions are on Equally Favorable Terms and (y) with respect to any such business or transaction or series of similar or related transactions having an aggregate value in excess of US$5 million, such business or transaction or series of similar or related transactions has been determined, in the written opinion of an Independent Appraiser, to be fair, from a financial point of view, to the Company or such Restricted Subsidiary.

The foregoing provisions shall not prohibit (i) any transaction between the Company and a Wholly Owned Subsidiary or between Wholly Owned Subsidiaries not otherwise prohibited by the terms of this Indenture; (ii) the making of any Restricted Payment or the Incurrence of Indebtedness which is expressly permitted under Sections 1010 and 1011; (iii) any reasonable payments, awards or grants, in cash or otherwise, pursuant to, or the funding of, employment arrangements approved by the Board of Directors; (iv) payments and transactions pursuant to the Management Services Agreement; and (v) any agreement to do any of the foregoing.

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SECTION 1014. *Limitation on Liens.*

The Company will not, and will not permit any Restricted Subsidiary to, directly or indirectly, create, incur, assume or suffer to exist any Lien of any kind upon any of its or their respective properties, whether owned at the Issue Date of thereafter acquired, other than Permitted Liens.

SECTION 1015. *Purchase of Notes upon Change in Control.*

(a) Upon the occurrence of a Change of Control, the Company shall be obligated to repurchase, at the election of each holder of Notes, all or any part of such holder's Notes at a repurchase price equal to 101% of the principal amount thereof plus accrued and unpaid interest (including Additional Interest, if any), to the date of repurchase (subject to the right of holders of record on the relevant record date to receive interest due on the relevant Interest Payment Date) pursuant to the offer described below (the "Change of Control Offer").

(b) Within 30 days following any Change in Control, the Company shall give to each Holder of the Notes in the manner provided in Section 106 a notice stating:

(1) that a Change in Control has occurred with respect to the Company and that such Holder has the right to require the Company to repurchase all or any part of such Holder's Notes at a repurchase price in cash equal to 101% of the principal amount thereof plus accrued and unpaid interest (including Additional Interest, if any),

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to the date of repurchase (subject to the right of Holders of record on the relevant record date to receive interest due on the relevant interest payment date);

(2) the circumstances and relevant facts regarding such Change in Control (including but not limited to information with respect to pro forma historical income, cash flow and capitalization after giving effect to such Change in Control, if applicable);

(3) the repurchase date (the "Repurchase Date") (which, except as otherwise required by applicable law, will be no earlier than 30 days nor later than 60 days from the date such notice is mailed); and

(4) the instructions a Holder must follow in order to have such Holder's Notes repurchased in accordance with paragraph (c) of this Section.

(c) Holders electing to have Notes purchased will be required to surrender such Notes to the Company at the address specified in the notice at least five Business Days prior to the Repurchase Date. Holders will be entitled to withdraw their election if the Company receives, not later than three Business Days prior to the Repurchase Date, a telegram, telex, facsimile transmission or letter setting forth the name of the Holder, the principal amount of the Notes delivered for purchase by the Holder as to which his election is to be withdrawn, and a statement that such Holder is

withdrawing his election to have such Notes purchased. Holders whose Notes are purchased only in part will be issued new Notes equal in principal amount to the unpurchased portion of the Notes surrendered.

(d) The Company will comply with the applicable tender offer laws, rules and regulations, including Rule 14e-1 under the Exchange Act, and any other applicable securities laws and regulations and any applicable requirements of any securities exchange on which the Notes are listed in connection with a Change of Control Offer. To the extent that the provisions of any securities laws or regulations or any applicable requirements of any securities exchange on which the Notes are listed conflict with the provisions of this Indenture, the Company will comply with the applicable securities laws and regulations and any applicable requirements of any securities exchange on which the Notes are listed and shall not be deemed to have breached its obligations described in this Indenture by virtue thereof.

(e) The Company shall not, and shall not permit any Restricted Subsidiary to, create or permit to exist or become effective any restriction (other than restrictions existing under Indebtedness or the Security Documents as in effect on the date of this Indenture) that would materially impair the ability of the Company to make a Change of Control Offer to purchase the Notes or, if such Change of Control Offer is made, to pay for the Notes tendered for purchase.

SECTION 1016. *Limitation on Sales of Assets*.

(a) The Company will not, and will not permit any Restricted Subsidiary, to make any Asset Disposition, other

than to the Company or a Wholly Owned Subsidiary, unless the fair market value (as determined in good faith by the Board of Directors, as evidenced by a board resolution) of any asset, property or Capital Stock disposed of in any Asset Disposition, together with the fair market value of all other assets, property or Capital Stock sold, transferred or otherwise disposed of in Asset Dispositions, during the four full fiscal quarters immediately preceding the date of the proposed Asset Disposition, is less than US$5 million, *provided, however,* that neither the Company nor any Restricted Subsidiary will be permitted to sell, transfer or otherwise dispose of any Collateral and *provided further* that no Asset Disposition may be made until the Company has delivered to the Trustee a certification of an internationally recognized independent auditor, that on a pro forma basis after giving effect to such Asset Disposition, the Cash Flow from the remaining assets would have resulted in a Debt Service Coverage Ratio of not less than 1.75 to 1.

(b) Notwithstanding the foregoing, the Company and its Restricted Subsidiaries shall be permitted to (i) engage in sales of systems, equipment and other related toll road assets so long as such sales arise from the upgrade or improvement of existing facilities, and (ii) dispose of the Company's indirect interests in the Non-Project Toll Road Joint Ventures in accordance with Section 1011(b)(1) of this Indenture.

SECTION 1017. *Maintenance of Debt Service Coverage Ratio*.

So long as any amounts are Outstanding under the Notes, the Company will maintain after the first anniversary of the

Issue Date a Debt Service Coverage Ratio of not less than 1.75 to 1. In the event that the Debt Service Coverage Ratio on any Determination Date after the first anniversary of the Issue Date is less than 1.75 to 1, the Holding Company or Traffic Stream (China), as the case may be, shall make a Capital Contribution to the Company in the aggregate amount specified below. Any such Capital Contribution shall be deposited in the Joint Venture Distribution Account within 30 days after the Calculation Date with respect to such Determination Date. The amount of the required Capital Contribution referred to above shall be determined by the Company and shall be equal to the lesser of (x) an amount, if included in the Company's Cash Flow for the period over which the Company's Debt Service Coverage Ratio is calculated on such Determination Date, that would have caused such Debt Service Coverage Ratio to be 1.75 to 1.00 and (y) US$30 million less the amount of any Capital Contributions previously made by the Holding Company and Traffic Stream (China). If the Holding Company or Traffic Stream (China), as the case may be, shall have made a Capital Contribution in an aggregate amount not less than the amount specified in clause (x) above within the 30-day period specified above, the Company shall not be considered to have violated this Section 1017 as of such Determination Date.

SECTION 1018. *Limitation on Nature of Business of Company, Hong Kong Holding Companies and Toll Road Joint Ventures*.

The Company will not, and will not permit the Hong Kong Holding Companies to, engage in any business activity or undertake any other activity other than the direct or indirect

ownership and management of its interests in the Toll Road Joint Ventures. The Project Toll Road Joint Ventures will not engage in any business activity or undertake any other activity other than the construction, ownership, operation and maintenance of the toll roads as well as any other activity contemplated under the Joint Venture Contracts as in effect on the Issue Date.

SECTION 1019. *Limitation on Ownership of Interests in Toll Road Joint Ventures*.

The Company shall hold its equity interests in the Project Toll Road Joint Ventures only through the Hong Kong Holding Companies, which shall remain Wholly Owned Subsidiaries of the Company.

SECTION 1020. *Maintenance of Ownership in Subsidiaries and Joint Ventures*.

The Company shall maintain its indirect ownership interests, and shall cause the Hong Kong Holding Companies to maintain their direct ownership interests in the Project Toll Road Joint Ventures at the percentage level directly or indirectly owned on the Issue Date. The Company shall cause the Hong Kong Holding Companies to not consent to any amendment to the terms of the Joint Venture Contracts with respect to distribution of profits, management or rights on liquidation in such a manner that is or would be materially adverse to Holders of the Notes. The Company shall not amend the Articles of Association of the Hong Kong Holding Companies in a manner that is or would be materially adverse to Holders of the Notes.

SECTION 1021. *Maintenance of Ownership in the Company.*

Following completion of the Bermuda Share Swap, the Holding Company shall maintain its ownership interest in the Company (through its ownership interest in Traffic Stream (China)) at 100% so long as any of the Notes remain Outstanding.

SECTION 1022. *Operation and Maintenance; Engineering Reports; Audit of Toll Collection System.*

(a) The Company shall, and shall cause each of the Project Toll Road Joint Ventures to operate and maintain each Toll Road in accordance with prudent industry operating and maintenance standards and practices generally accepted in the operation of toll road projects. The Company shall engage an independent engineering firm to complete an engineering report on the status of the toll roads under construction and on the condition of the toll roads operated by the Project Toll Road Joint Ventures, with a "bring-down" report identifying all material repairs which, in such engineering firm's best judgment, should be made to the Toll Roads, such "bring-down" report to be delivered to the Trustee every four years. The Company will cause the Project Toll Road Joint Ventures to make any and all repairs to the Toll Roads which repairs are identified as necessary in the independent engineering firm's "bring-down" report.

(b) The Company shall engage an internationally recognized auditing firm to audit, in connection with the preparation of the Company's annual audited financial

statements, the toll collections system of each of the Project Toll Roads and to deliver such audit to the Trustee. In the event that such audit discloses material deficiencies in any of the Project Toll Road toll collection systems then the Company shall have 60 days to cure such material deficiency as evidenced by the delivery of a certification of the auditing firm to the Trustee to the effect that such material deficiency has been rectified.

SECTION 1023. *Disposition of Non-Project Toll Road Joint Venture.*

The Company will use its best efforts to cause the Hong Kong Holding Companies to transfer all of the Capital Stock representing their interests in the Non-Project Toll Road Joint Ventures to a Person that is not owned, directly or indirectly, by the Company not later than eighteen months after the Issue Date.

SECTION 1024. *Installation and Certification of Computerized Ticketing System; Relocation of Toll Booth.*

The Company will use its best efforts to cause each Project Toll Road Joint Venture to install a computerized ticketing system, and will use its best efforts to obtain a certification from an independent expert in traffic consulting to the effect that such system is fully installed and operational and conforms in all material respects to standard industry specifications, no later than the dates specified for each of the respective Toll Roads in the following schedule:

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Toll Road	**Certification Date**
Yanwei Highway	June 30, 1998
Shaonan Highway	June 30, 1998
Guangzhan Highway (Kaiping Section)	July 31, 1998
Yanwei Expressway	September 30, 1998
Guanlong Highway	September 30, 1998
Meishan Expressway (Meizhou Section)	September 30, 1999

In addition, the Company will use its best efforts to cause the Project Toll Road Joint Ventures operating the Yanwei Highway to relocate the toll booth on the Yantai end of the Yanwei Highway to a new site located within ten kilometers of the center of Yantai.

SECTION 1025. *Government Approvals; Compliance with Laws.*

The Company shall, and shall cause each of its Subsidiaries to, at all times (i) obtain and maintain in full force and effect all government authorizations, approvals and consents relating to any Project Toll Road Joint Venture and (ii) preserve and maintain good and valid title to its properties and assets (subject to the Section 1014), except in any such case where any failure to comply with clause (i) or (ii) would not reasonably be expected to have a material adverse effect on the business or results of operations of the Company and its Subsidiaries, taken as a whole, or the ability of the Company to perform its obligations under this Indenture or the Notes.

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The Company shall, and shall cause each of its Subsidiaries to, comply with all applicable laws, rules, regulations and orders of, and all applicable restrictions imposed by, any governmental authority or regulatory body in respect of the conduct of its business and the ownership of its properties, except to the extent that any failure to comply therewith would not reasonably be expected to have a material adverse effect on the business or results of operations of the Company and its Subsidiaries, taken as a whole, or the ability of the Company to perform its obligations under this Indenture or the Notes.

SECTION 1026. *Payment of Additional Amounts.*

All payments of principal of, premium, if any, and interest (including Additional Interest, if any) on each Note shall be made free and clear of, and without withholding or deduction for, any taxes, duties, assessments or governmental charges of whatever nature imposed, levied, collected, withheld or assessed by or within the British Virgin Islands, the PRC or Hong Kong or any authority therein or thereof having power to tax, unless such withholding or deduction is required by law or by regulation or governmental policy having the force of law. In the event that any such withholding or deduction in respect of principal, premium or interest is so required, the Company shall pay such additional amounts ("Additional Amounts") as will result in receipt by each holder of any Note of such amounts as would have been received by such holder or the beneficial owner with respect to such Note had no such withholding or deduction been required, except that no Additional Amounts shall be payable:

(a) for or on account of:

(1) any tax, duty, assessment or other governmental charge that would not have been imposed but for

(A) the existence of any present or former connection between such holder or the beneficial owner of such Note and the British Virgin Islands, the PRC or Hong Kong, as the case may be, other than merely holding such Note or receiving payments or enforcing rights in respect thereof, including, without limitation, such holder or the beneficial owner of such Note being or having been a national, domiciliary or resident of or treated as a resident thereof or being or having been present or engaged in a trade or business therein or having or having had a permanent establishment therein; or

(B) the presentation of such Note (where presentation is required) more than 30 days after the date on which the payment in respect of such Note became due and payable or provided for, whichever is later, except to the extent that such holder would have been entitled to such Additional Amounts if it had presented such Note for payment on any day within such period of 30 days;

(2) any estate, inheritance, gift, sale, transfer, personal property or similar tax, assessment or other governmental charge;

(3) any tax, assessment or other governmental charge that is imposed or withheld by reason of the failure of such holder or the beneficial owner of such Note to comply with a request by the Company addressed to such holder (A) to provide information concerning the nationality, residence or identity of such holder or such beneficial owner or (B) to make any declaration or other similar claim or satisfy any information or reporting requirement, which, in the case of (A) or (B), is required or imposed by a statute, treaty, regulation or administrative practice of the taxing jurisdiction as a precondition to exemption from all or part of such tax, assessment or other governmental charge; or

(4) any combination of items (1), (2) and (3); or

(b) with respect to any payment of the principal of, premium, if any, or interest on such Note to such holder (including a fiduciary or partnership) to the extent that the beneficial owner of such Note would not have been entitled to such Additional Amounts had it been the holder of the Note.

(c) At least 30 Business Days prior to each Interest Payment Date if there has been any change of law which may result in the payment by the Company of Additional

Amounts after the date hereof or prior to such Interest Payment Date, as the case may be, the Company shall furnish the Trustee an Officer's Certificate instructing the Trustee as to any circumstances in which payments of principal of or interest on any Note (including Additional Amounts) due on such date shall be subject to deduction or withholding for or on account of any taxes and the rate of any such deduction or withholding. The Company covenants to indemnify the Trustee and any other Paying Agents for, and to hold each harmless against, any loss, liability or expense reasonably incurred without negligence, bad faith or wilful misconduct on their part, arising out of or in connection with actions taken or not taken by any of them in reliance on any certificate furnished to them pursuant to this paragraph or the failure to furnish any such certificate. The obligations of the Company under this preceding sentence shall survive payment of all the Notes, the satisfaction and discharge of this Indenture and the resignation or removal of the Trustee, the Registrar or any Paying Agent. Any certificate required by this Section to be provided to the Trustee and any other Paying Agent shall be deemed to be duly provided if telecopied to the Trustee and such other Paying Agent. Upon request, the Company shall provide the Trustee with documentation reasonably satisfactory to the Trustee evidencing the payment of taxes in respect of which the Company has paid any Additional Amounts. Copies of such documentation shall be made available by the Trustee to the Holders or the other Paying Agents, as applicable, upon request therefor.

Whenever there is mentioned, in any context, the payment of principal, premium or interest in respect of any Note or the net proceeds received on the sale or exchange of

any Note, such mention shall be deemed to include the payment of Additional Amounts provided for in this Indenture to the extent that, in such context, Additional Amounts are, were or would be payable in respect thereof pursuant to this Indenture.

ARTICLE ELEVEN

REDEMPTION OF NOTES

SECTION 1101. *Right of Redemption.*

(a) The Notes may be redeemed at the option of the Company, subject to the conditions and at the Redemption Prices specified in the form of Note under the caption "5. Redemption — Optional Redemption", together with accrued interest (including Additional Interest, if any) to the Redemption Date and Additional Amounts, if any.

(b) The Notes shall be redeemed on the dates and at the Redemption Prices specified in the form of Note under the caption "5. Redemption — Mandatory Redemption", together with accrued interest (including Additional Interest, if any) to the Mandatory Redemption Date and Additional Amounts, if any.

SECTION 1102. *Applicability of Article.*

Redemption of Notes at the election of the Company or otherwise, as permitted or required by any provision of this Indenture, shall be made in accordance with such provision and this Article.

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SECTION 1103. *Election to Redeem; Notice to Trustee.*

The election of the Company to redeem any Notes pursuant to Section 1101(a) shall be evidenced by a Board Resolution. In case of any redemption at the election of the Company, the Company shall, at least 60 days prior to the Redemption Date fixed by the Company (unless a shorter notice shall be satisfactory to the Trustee), notify the Trustee in writing of such Redemption Date and of the principal amount of Notes to be redeemed and shall deliver to the Trustee such documentation and records as shall enable the Trustee to select the Notes to be redeemed pursuant to Section 1104.

SECTION 1104. *Selection by Trustee of Notes to Be Redeemed.*

If less than all the Notes are to be redeemed, the particular Notes to be redeemed shall be selected not more than 60 days prior to the Redemption Date by the Trustee, from the Outstanding Notes not previously called for redemption, by such method as the Trustee shall deem fair and appropriate and which may provide for the selection for redemption of portions of the principal of Notes; *provided, however,* that no such partial redemption shall reduce the portion of the principal amount of a Note not redeemed to less than $1,000.

The Trustee shall promptly notify the Company in writing of the Notes selected for redemption and, in the case of any Notes selected for partial redemption, the principal amount thereof to be redeemed.

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For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to redemption of Notes shall relate, in the case of any Note redeemed or to be redeemed only in part, to the portion of the principal amount of such Note which has been or is to be redeemed.

SECTION 1105. *Notice of Redemption.*

Notice of redemption shall be given in the manner provided for in Section 106 not less than 30 nor more than 60 days prior to the Redemption Date, to each Holder of Notes to be redeemed.

All notices of redemption shall state:

(1) the Redemption Date,

(2) the Redemption Price and the amount of accrued interest to the Redemption Date payable as provided in Section 1107, if any,

(3) if less than all Outstanding Notes are to be redeemed, the identification (and, in the case of a partial redemption, the principal amounts) of the particular Notes to be redeemed,

(4) in case any Note is to be redeemed in part only, the notice which relates to such Note shall state that on and after the Redemption Date, upon surrender of such Note, the Holder will receive, without charge, a new Note or Notes of authorized denominations for the principal amount thereof remaining unredeemed,

(5) that on the Redemption Date, the Redemption Price (and accrued interest, if any, to the Redemption Date payable as provided in Section 1107) will become due and payable upon each such Note, or the portion thereof, to be redeemed, and that interest thereon will cease to accrue on and after said date, and

(6) the place or places where such Notes are to be surrendered for payment of the Redemption Price and accrued interest, if any.

Notice of redemption of Notes to be redeemed at the election of the Company shall be given by the Company or, at the Company's request, by the Trustee in the name and at the expense of the Company.

SECTION 1106. *Deposit of Redemption Price.*

Prior to any Redemption Date, the Company shall deposit with the Trustee or with a Paying Agent (or, if the Company is acting as its own Paying Agent, segregate and hold in trust as provided in Section 1003) an amount of money sufficient to pay the Redemption Price of, and any applicable Additional Amounts and accrued interest on, all the Notes which are to be redeemed on that date.

SECTION 1107. *Notes Payable on Redemption Date.*

Notice of redemption having been given as aforesaid, the Notes so to be redeemed shall, on the Redemption Date, become due and payable at the Redemption Price therein specified (together with accrued interest, if any, to the

Redemption Date and Additional Amounts, if any), and from and after such date (unless the Company shall default in the payment of the Redemption Price, accrued interest and Additional Amounts, if any) such Notes shall cease to bear interest. Upon surrender of any such Note for redemption in accordance with said notice, such Note shall be paid by the Company at the Redemption Price, together with accrued interest, if any, to the Redemption Date and Additional Amounts, if any; *provided, however,* that installments of interest whose Stated Maturity is on or prior to the Redemption Date shall be payable to the Holders of such Notes, or one or more Predecessor Notes, registered as such at the close of business on the relevant Record Dates according to their terms and the provisions of Section 309.

If any Note called for redemption shall not be so paid upon surrender thereof for redemption, the principal (and premium, if any) shall, until paid, bear interest from the Redemption Date at the rate borne by the Notes.

ARTICLE TWELVE

DEFEASANCE AND COVENANT DEFEASANCE

SECTION 1201. *Company's Option to Effect Defeasance or Covenant Defeasance.*

The Company may, at its option and, at any time, with respect to the Notes, elect to have either Section 1202 or Section 1203 be applied to all Outstanding Notes upon compliance with the conditions set forth below in this Article Twelve.

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SECTION 1202. *Defeasance and Discharge.*

Upon the Company's exercise under Section 1201 of the option applicable to this Section 1202, the Company shall be deemed to have been discharged from its obligations with respect to all Outstanding Notes on the date the conditions set forth in Section 1204 are satisfied (hereinafter, "defeasance"). For this purpose, such defeasance means that the Company shall be deemed to have paid and discharged the entire Indebtedness represented by the Outstanding Notes, which shall thereafter be deemed to be "Outstanding" only for the purposes of Section 1205 and the other Sections of this Indenture referred to in (A) and (B) below, and to have satisfied all its other obligations under such Notes and this Indenture insofar as such Notes are concerned (and the Trustee, at the request and expense of the Company, shall execute proper instruments acknowledging the same), except for the following which shall survive until otherwise terminated or discharged hereunder: (A) the rights of Holders of Outstanding Notes to receive, solely from the trust fund described in Section 1204 and as more fully set forth in such Section, payments in respect of the principal of (and premium, if any, on), interest on and Additional Amounts, if any, in respect of such Notes when such payments are due, (B) the Company's obligations with respect to such Notes under Sections 112, 304, 305, 306, 307, 308, 515, 608(e), 1002, 1003 and 1009, (C) the rights, powers, trusts, duties and immunities of the Trustee hereunder and (D) this Article Twelve. Subject to compliance with this Article Twelve, the Company may exercise its option under this Section 1202 notwithstanding the prior exercise of its option under Section 1203 with respect to the Notes.

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SECTION 1203. *Covenant Defeasance.*

Upon the Company's exercise under Section 1201 of the option applicable to this Section 1203, the Company shall be released from its obligations under any covenant contained in Section 801(a) and in Sections 1007 through 1024 with respect to the outstanding Notes on and after the date the conditions set forth below are satisfied (hereinafter, "covenant defeasance"), and the Notes shall thereafter be deemed not to be "Outstanding" for the purposes of any direction, waiver, consent or declaration or Act of Holders (and the consequences of any thereof) in connection with such covenants, but shall continue to be deemed "Outstanding" for all other purposes hereunder. For this purpose, such covenant defeasance means that, with respect to the Outstanding Notes, the Company may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such covenant or by reason of any reference in any such covenant to any other provision herein or in any other document and such omission to comply shall not constitute a Default or an Event of Default under Section 501(3) and 501(4), but, except as specified above, the remainder of this Indenture and such Notes shall be unaffected thereby.

SECTION 1204. *Conditions to Defeasance or Covenant Defeasance.*

The following shall be the conditions to application of either Section 1202 or Section 1203 to the Outstanding Notes:

(1) The Company shall irrevocably have deposited or caused to be deposited with the

Trustee (or another trustee satisfying the requirements of Section 607 who shall agree to comply with the provisions of this Article Twelve applicable to it) as trust funds in trust for the purpose of making the following payments, specifically pledged as security for, and dedicated solely to, the benefit of the Holders of such Notes, (A) cash in U.S. dollars, or (B) U.S. Government Obligations which through the scheduled payment of principal and interest in respect thereof in accordance with their terms will provide, not later than one day before the due date of any payment, money in an amount, or (C) a combination thereof, in such amounts as will be sufficient, in the opinion of an internationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay and discharge, and which shall be applied by the Trustee (or other qualifying trustee) to pay and discharge, (i) the principal of (and premium, if any), interest on and all Additional Amounts then due or known to become due on the Outstanding Notes on the Stated Maturity (or Redemption Date, if applicable) of such principal (and premium, if any) or installment of interest and (ii) any mandatory redemption payments or analogous payments applicable to the Outstanding Notes on the day on which such payments are due and payable in accordance with the terms of this Indenture and of such Notes; *provided* that the Trustee shall have been irrevocably instructed to apply such money or the

proceeds of such U.S. Government Obligations to said payments with respect to the Notes.

(2) In the case of an election under Section 1202, no Default or Event of Default with respect to the Notes shall have occurred and be continuing on the date of such deposit.

(3) Such defeasance or covenant defeasance shall not result in a breach or violation of, or constitute a default under, this Indenture or any other material agreement or instrument to which the Company is a party or by which it is bound.

(4) In the case of an election under Section 1202, the Company shall have delivered to the Trustee an Opinion of Counsel stating that (x) the Company has received from, or there has been published by, the Internal Revenue Service a ruling, or (y) since the date of this Indenture, there has been a change in the applicable U.S. federal income tax law, in either case to the effect that, and based thereon such opinion shall confirm that, the holders of the Outstanding Notes will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such defeasance had not occurred.

(5) In the case of an election under Section 1203, the Company shall have delivered to the

Trustee an Opinion of Counsel to the effect that the Holders of the Outstanding Notes will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such covenant defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such covenant defeasance had not occurred.

(6) The Company shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent provided for relating to either the defeasance under Section 1202 or the covenant defeasance under Section 1203, as the case may be, have been complied with.

SECTION 1205. *Deposited Money and U.S. Government Obligations to Be Held in Trust; Other Miscellaneous Provisions.*

Subject to the provisions of the last paragraph of Section 1003, all money and U.S. Government Obligations (including the proceeds thereof) deposited with the Trustee (or other qualifying trustee, collectively for purposes of this Section 1205, the "Trustee") pursuant to Section 1204 in respect of the Outstanding Notes shall be held in trust and applied by the Trustee, in accordance with the provisions of such Notes and this Indenture, to the payment, either directly or through any Paying Agent (including the Company acting as its own Paying Agent) as the Trustee may determine, to the Holders of such Notes of all sums due and to become due thereon in

respect of principal (and premium, if any) and interest, and Additional Amounts payable under then applicable law, but such money need not be segregated from other funds except to the extent required by law.

The Company shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the U.S. Governmental Obligations deposited pursuant to Section 1204 or the principal and interest received in respect thereof other than any such tax, fee or other charge which by law is for the account of the Holders of the Outstanding Notes.

Anything in this Article Twelve to the contrary notwithstanding, the Trustee shall deliver or pay to the Company from time to time upon Company Request any money or U.S. Government Obligations held by it as provided in Section 1204 which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, are in excess of the amount thereof which would then be required to be deposited to effect an equivalent defeasance or covenant defeasance, as applicable, in accordance with this Article Twelve.

SECTION 1206. *Reinstatement.*

If the Trustee or any Paying Agent is unable to apply any money in accordance with Section 1205 by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, then the Company's obligations under this Indenture and the Notes shall be revived and reinstated as

though no deposit had occurred pursuant to Section 1202 or 1203, as the case may be, until such time as the Trustee or Paying Agent is permitted to apply all such money in accordance with Section 1205; *provided, however,* that if the Company makes any payment of principal of (or premium, if any) or interest on any Note following the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Notes to receive such payment from the money held by the Trustee or Paying Agent.

ARTICLE THIRTEEN

SECURITY

SECTION 1301. *Collateral.*

As security for the payment and performance by the Company of its obligations under this Indenture and the Notes, upon the terms and conditions set forth in this Indenture, (A) the Company hereby grants to, and charges by way of a first fixed charge in favor of, the Trustee for the benefit of the Holders of the Notes a first priority security interest in all the Company's rights, title and interest in and to (i) the Debt Service Reserve Account, the Construction Funding Account, the Joint Venture Distribution Account and the Note Redemption Account and all amounts deposited therein at any time (the "Collateral Accounts"); and (ii) all Dollar Permitted Investments made with amounts on deposit in the Collateral Accounts; (B) the Company will grant or cause to be granted, and will charge or cause to be charged by way of a first fixed charge, (i) all of the issued and outstanding capital stock of the Hong Kong Holding

Companies pursuant to the Mortgage of Shares (ii) all sums and other monies from time to time owing from a Hong Kong Holding Company to the Company pursuant to the Assignment of Receivables, (iii) the rights of the Hong Kong Holding Companies to distributable cash flows from the Project Toll Road Joint Ventures in accordance with the applicable Joint Venture Contracts and the other collateral pursuant to and as specified in the Collateral Assignment Agreements; (iv) all of the rights of Drew Services Limited under the Management Services Agreement with respect to fees for management services rendered to the benefit of the Project Toll Road Joint Ventures pursuant to the Service Fee Pledge Agreement; and (v) all distributions, revenues, products, substitutions, benefits, profits and proceeds, in whatever form, of any of the foregoing. The Holders of the Notes will have a claim on the Collateral in respect of the Notes held by them that is prior to the claims of all other creditors of the Company.

SECTION 1302. *Recording, Etc.*

The Company will cause, at its own expense, the Collateral Accounts and this Indenture and all amendments or supplements thereto to be registered, recorded and filed or re-recorded, re-filed and renewed in such manner and in such place or places, if any, as may be required by law in order fully to preserve and protect the security interests created under the Collateral Accounts and to effectuate and preserve the security therein granted to the Trustee hereunder for the benefit of the Holders.

The Company will comply with all applicable provisions of the TIA, including, without limitation, Section 314(b) of the TIA.

SECTION 1303. *Investment of Funds in Collateral Accounts.*

So long as no Event of Default shall have occurred and be continuing, all funds in the Collateral Accounts shall be invested and reinvested by the Trustee, at the instructions of the Company, in Dollar Permitted Investments. If any Event of Default shall have occurred and be continuing, the funds in the Collateral Accounts shall be invested and reinvested in Dollar Permitted Investments by the Trustee.

SECTION 1304. *Debt Service Reserve Account.*

The Trustee will establish a Debt Service Reserve Account for the Notes on or before the Issue Date. On the Issue Date, the Company will cause to be deposited with the Trustee for deposit into the Debt Service Reserve Account an amount in U.S. Dollars equal to the amount of interest due and payable on the Notes on the next succeeding Interest Payment Date. If on any Interest Payment Date there shall not be in the Debt Service Reserve Account an amount equal to or greater than the amount of interest (including Additional Interest, if any) due and payable on the next succeeding Interest Payment Date, the Company shall within 30 days of such Interest Payment Date deposit into the Debt Service Reserve Account an amount which, when added to the amount already in the Debt Service Reserve Account, will equal the amount of interest (including Additional Interest, if any) due

and payable on the Notes on the next succeeding Interest Payment Date. Additional Interest shall be included in calculating interest due and payable on the next succeeding Interest Payment Date only to the extent that Additional Interest has begun to accrue on the Notes. Amounts on deposit in the Debt Service Reserve Account in excess of the amount of interest due on the next succeeding Interest Payment Date shall be transferred to the Joint Venture Distribution Account on each Interest Payment Date.

SECTION 1305. *Construction Funding Account.*

The Trustee will establish the Construction Funding Account for the Notes on or before the Issue Date. On the Issue Date, the Company will cause to be deposited with the Trustee for deposit into the Construction Funding Account US$105,131,250.

Amounts on deposit in the Construction Funding Account may only be withdrawn upon receipt by the Trustee of an Officer's Certificate specifying the amount of funds to be withdrawn and that such funds are required to be, and will be, contributed by the Company or its Subsidiary in respect of a Project Toll Road Joint Venture. In addition, on or after the first Business Day of 2000, the Company may, upon written request in the form of an Officer's Certificate certifying that there has not been a 1999 Devaluation, withdraw from the Construction Funding Account 50% of the Excess Project Construction Funds held in the Construction Funding Account on the last Business Day of 1999 and apply such funds at its discretion without regard to Section 1011; *provided, however,* that if the Trustee shall

receive an Officer's Certificate stating that a 1999 Devaluation shall have occurred, all of the Excess Project Construction Funds shall be transferred into the Joint Venture Distribution Account. On or after the first Business Day of 2001, the Company may, upon written request in the form of an Officer's Certificate certifying that there has not been a 2000 Devaluation, withdraw from the Construction Funding Account all of the remaining Excess Project Construction Funds held in the Construction Funding Account and apply such funds at its discretion without regard to Section 1011; *provided, however,* that if the Trustee shall receive an Officer's Certificate stating that a 2000 Devaluation shall have occurred, all of the Excess Project Construction Funds remaining in the Construction Funding Account shall be transferred into the Joint Venture Distribution Account. The Trustee shall have no duty to determine whether a 1999 Devaluation or a 2000 Devaluation has occurred but may rely conclusively on an Officer's Certificate as to such matters.

Interest earned and received by the Trustee on amounts on deposit in the Construction Funding Account shall be transferred to the Joint Venture Distribution account on each Interest Payment Date.

Notwithstanding the foregoing, no amounts may be released from the Construction Funding Account if an Event of Default has occurred and is continuing.

SECTION 1306. *Joint Venture Distribution Account.*

The Trustee will establish the Joint Venture Distribution Account on or before the Issue Date. Pursuant to the terms

of the Collateral Assignment Agreements, the Project Toll Road Joint Ventures will deposit into the Joint Venture Distribution Account in U.S. Dollars all amounts in respect of distributions payable to the Hong Kong Holding Companies pursuant to the terms of the applicable Joint Venture Contracts. In addition, Capital Contributions made pursuant to Section 1017 and received by the Trustee shall be deposited in the Joint Venture Distribution Account. The Trustee shall first allocate amounts in the Joint Venture Distribution Account to a segregated sub-account (the "Interest Payment Account") up to the amount of interest (including Additional Interest, if any) due and payable on the Notes within 180 days of the later of (i) the Issue Date and (ii) the most recent Interest Payment Date. Amounts on deposit in the Joint Venture Distribution Account may only be withdrawn (a) by the Trustee on each Interest Payment Date in an amount equal to the amount of interest (including Additional Interest, if any) due and payable on the Notes on that Interest Payment Date, (b) by the Trustee on each Mandatory Redemption Date in an amount sufficient to redeem the aggregate principal amount of Notes required to be redeemed on such Mandatory Redemption Date, (c) by the Trustee at the written direction of the Company and upon receipt by the Trustee of an Officer's Certificate specifying the amount of funds to be withdrawn and that such funds will be applied to meet tax obligations of the Company and the Hong Kong Holding Companies and (d) by the Trustee at the written direction of the Company and upon receipt by the Trustee of an Officer's Certificate specifying the amount of funds to be withdrawn and that such funds will be applied in accordance with Section 1011.

SECTION 1307. *Note Redemption Account.*

The Trustee will establish the Note Redemption Account on or before the Issue Date. Funds in the Note Redemption Account will be applied on each Interest Payment Date commencing May 1, 2001 (each, a "Mandatory Redemption Date") to redeem on each Mandatory Redemption Date selected Notes held by Holders. The Company will instruct the Trustee to transfer into the Note Redemption Account from the Joint Venture Distribution Account sufficient funds to redeem selected Notes in accordance with the terms of the Notes.

SECTION 1308. *Letter of Credit Procurement and Deposit Agreement.*

(a) Concurrently with the delivery to the Trustee of the LOC, the Company shall deliver to the Trustee an Officer's Certificate stating that such LOC satisfies the requirements of, and is in compliance with, the provisions of the LOC and Deposit Agreement as in effect on the date hereof.

(b) The Trustee shall draw on the LOC under the following circumstances:

(A) at any time prior to the Deposit having been made pursuant to Section 2 of the LOC and Deposit Agreement:

(i) if there exists and is continuing an Event of Default under this Indenture, in which case the Trustee shall draw the

full amount available under the LOC and deposit such amount into the Construction Funding Account;

(ii) at the direction of the Company pursuant to a Company Order specifying the amount to be drawn on the LOC and certifying that such amount is to be applied to meet additional costs incurred in connection with the completion of the Toll Roads Under Development, in which case the Trustee shall draw the specified amount and deposit such amount into the Construction Funding Account pending application pursuant to the terms of this Indenture; or

(iii) at the direction of the Company pursuant to a Company Order instructing the Trustee to draw a specified amount under the LOC in satisfaction of all or a portion of Traffic Stream (China)'s or the Holding Company's obligation to make the Deposit pursuant to Section 2 of the LOC and Deposit Agreement, in which case the Trustee shall draw the specified amount and deposit such amount into the Construction Funding Account; and

(B) if there has not been deposited into the Construction Funding Account by May 6, 1999

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the Deposit pursuant to Section 2 of the LOC and Deposit Agreement, the Trustee shall, without instruction, draw on the LOC such amount which, when added to any amounts (if any) deposited into the Construction Funding Account pursuant to Section 2 of the LOC and Deposit Agreement, would equal US$8,058,750, which amount the Trustee shall deposit into the Construction Funding Account.

* * *

This Indenture may be signed in any number of counterparts each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same Indenture.

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed, and their respective corporate seals to be hereunto affixed and attested, all as of the day and year first above written.

TRAFFIC STREAM (BVI)
INFRASTRUCTURE LIMITED

By: s/ [illegible]
Name:
Title:

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THE CHASE MANHATTAN BANK

By: s/ [illegible]
Name:
Title:

CHASE MANHATTAN BANK
LUXEMBOURG S.A.

By: s/ [illegible]
Name:
Title:

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EXHIBIT A

[FACE OF NOTE]

GLOBAL REGISTERED NOTE
representing a principal amount of up to US$●

FORM OF LEGEND FOR GLOBAL NOTES

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IN EXCHANGE HEREFOR IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL SINCE THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFERS OF THIS GLOBAL NOTE SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF THE DEPOSITORY TRUST COMPANY OR TO THE DEPOSITORY TRUST COMPANY, OR TO A SUCCESSOR THEREOF OR SUCH

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SUCCESSOR'S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL NOTE SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN ARTICLE TWO OF THE INDENTURE.

FORM OF LEGEND FOR RULE 144A GLOBAL NOTE

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT") OR THE SECURITIES LAWS OF ANY STATE AND ACCORDINGLY, MAY NOT BE OFFERED OR SOLD WITHIN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF, U.S. PERSONS EXCEPT AS SET FORTH IN THE FOLLOWING SENTENCE. THE HOLDER HEREOF, BY ACCEPTANCE OF THIS NOTE, AGREES FOR THE BENEFIT OF TRAFFIC STREAM (BVI) INFRASTRUCTURE LIMITED (THE "COMPANY") THAT THIS NOTE MAY BE OFFERED, RESOLD, PLEDGED OR OTHERWISE TRANSFERRED ONLY: (1) TO THE COMPANY OR ANY AFFILIATE THEREOF, (2) TO A PERSON WHOM THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER, AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT ("RULE 144A"), THAT IS PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A AS INDICATED BY THE BOX CHECKED BY THE TRANSFEROR ON THE REVERSE OF THIS NOTE, (3) IN AN OFFSHORE

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TRANSACTION IN ACCORDANCE WITH REGULATION S UNDER THE SECURITIES ACT, (4) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT (IF AVAILABLE) OR (5) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, IN EACH CASE IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES OR ANY OTHER JURISDICTION SUBJECT TO THE COMPANY'S RIGHT PRIOR TO ANY OFFER, RESALE OR TRANSFER PURSUANT TO CLAUSE (4) ABOVE TO REQUIRE A DELIVERY OF OPINION OF COUNSEL, CERTIFICATION AND/OR OTHER INFORMATION SATISFACTORY TO THE COMPANY, AND IN EACH OF THE FOREGOING CASES, TO REQUIRE THAT A CERTIFICATE OF TRANSFER IN THE FORM APPEARING ON THE OTHER SIDE OF THIS NOTE BE COMPLETED AND DELIVERED BY THE TRANSFEROR TO THE TRUSTEE. THIS LEGEND MAY BE REMOVED AFTER THE EXPIRATION OF TWO YEARS FROM THE LATER OF (i) THE DATE OF ORIGINAL ISSUANCE OF THE NOTE EVIDENCED HEREBY, OR (ii) THE LAST DAY ON WHICH THE COMPANY OR ANY AFFILIATE OF THE COMPANY WAS THE OWNER OF THE NOTE EVIDENCED HEREBY (OR OF ANY PREDECESSOR OF SUCH NOTE).]

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TRAFFIC STREAM
(BVI) INFRASTRUCTURE LIMITED

14¼% Senior Secured Notes due 2006

CUSIP No. _____

No. _____ $ _____

Issue Date: May 6, 1998

This Global Registered Note represents up to an aggregate principal amount of US$119,000,000 of the 14¼% Senior Secured Notes due 2006 (the "Notes") issued by Traffic Stream (BVI) Infrastructure Limited, a corporation duly organized on August 8, 1997 and existing for an unlimited duration under the laws of the British Virgin Islands (herein called the "Company", which term includes any successor Person under the Indenture hereinafter referred to), pursuant to the Indenture hereinafter referred to.

The Company, for value received, hereby promises to pay to _____ or its registered assigns, upon surrender hereof, the outstanding principal sum of the Notes represented hereby on May 1, 2006.

Interest Rate: 14¼%

Interest Payment Dates: May 1 and November 1, commencing November 1, 1998

Regular Record Dates: April 15 and October 15

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Reference is hereby made to the further provisions of this Note set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

Unless the certificate of authentication hereon has been duly executed by the Trustee or the Authenticating Agent referred to on the reverse hereof by manual signature, this Note shall not be entitled to any benefit under the Indenture, or be valid or obligatory for any purpose.

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed manually or by facsimile by its duly authorized officers.

Dated: May 6, 1998

TRAFFIC STREAM (BVI) INFRASTRUCTURE LIMITED

By: _____
Name:
Title:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

Dated: May 6, 1998

This is one of the 14¼% Senior Secured Notes due 2006 referred to in the within-mentioned Indenture.

THE CHASE MANHATTAN BANK,
as Trustee

By: _____
Authorized Officer

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(Form of Reverse of Note)

14¼% Senior Secured Notes due 2006

1. *Principal and Interest.*

The Company will pay the outstanding principal of this Note on May 1, 2006.

The Company promises to pay interest on the principal amount of this Note on each Interest Payment Date, as set forth below, at the rate of 14¼% per annum (subject to adjustment as provided under "Special Interest" below). In addition, under certain circumstances, the interest rate borne by this Note may be increased by 2.00 per cent per annum as described under "Penalty Interest" below.

Interest will be payable semiannually (to the holders of record of the Notes (or any predecessor Notes) at the close of business on each April 15 or October 15 immediately preceding the Interest Payment Date) on each Interest Payment Date, commencing November 1, 1998.

Special Interest. The Holder of this Note is entitled to the benefits of the Registration Rights Agreement, dated May 6, 1998, between the Company and Merrill Lynch, Pierce, Fenner & Smith Incorporated, (the "Registration Rights Agreement"). Capitalized terms used in this paragraph and not defined elsewhere in this Note have the meanings ascribed thereto in the Registration Rights Agreement. In the event that (i) the Exchange Offer Registration Statement (or, if applicable, a Shelf Registration Statement) is not filed with

the SEC on or prior to the 120th day following the date of the Indenture, (ii) the Exchange Offer Registration Statement (or, if applicable, a Shelf Registration Statement) with respect to the Registrable Notes is not declared effective on or prior to the 150th day following the date of the Indenture, (iii) the Exchange Offer is not consummated on or prior to the 30th day following the date of effectiveness of the Exchange Offer Registration Statement, or (iv) the Exchange Offer Registration Statement or Shelf Registration Statement is filed with the SEC and declared effective but shall thereafter cease to be effective (except as specifically permitted in the Registration Rights Agreement) without being succeeded immediately by an additional Registration Statement filed with the SEC and declared effective, the interest rate borne by this Notes shall be increased by 0.50 percent per annum following such 120-day period in the case of clause (i) above, following such 150-day period in the case of clause (ii) above, following such 30-day period in the case of clause (iii) above and, except as specifically permitted herein, if a Registration Statement is not filed with the SEC and declared effective immediately following an event described in (iv) above, which rate will be increased by an additional 0.25 percent per annum for each consecutive 90-day period that any such additional interest continues to accrue, *provided* that the aggregate increase in such annual interest rate will in no event exceed 1.00 percent. Upon (w) the filing of the Exchange Offer Registration Statement or Shelf Registration Statement after the 120-day period described in clause (i) above, (x) the effectiveness of the Exchange Offer Registration Statement or Shelf Registration Statement after the 150-day period described in clause (ii) above, (y) the day before consummation of the Exchange

Offer after the 30-day period described in clause (iii) above or (z) a Registration Statement is filed with the SEC and declared effective following an event described in paragraph (iv) above, the interest rate borne by the Notes from the date of such filing, effectiveness or the day before the date of consummation, as the case may be, will be reduced to the original interest rate if the Company is otherwise in compliance with this paragraph; *provided, however,* that, if after any such reduction in interest rate, a different event specified in clauses (i), (ii), (iii) or (iv) above occurs, the interest rate will again be increased and thereafter reduced pursuant to the foregoing provisions. If the Company issues a notice that the Shelf Registration Statement is unusable pending the announcement of a material corporate transaction or otherwise pursuant to Section 3(k) of the Registration Rights Agreement, or such a notice is required under applicable securities laws to be issued by the Company, and the aggregate number of days in any consecutive 12-month period for which all such notices are issued or required to be issued exceeds 30 days in the aggregate, then the interest rate borne by the Notes will be increased by 0.50 of one percent per annum following the date that such Shelf Registration Statement ceases to be usable beyond the period permitted above, which rate shall be increased by an additional 0.25 percent per annum for each subsequent 90 day period that such additional interest continues to accrue; *provided* that the aggregate increase in such annual interest rate may in no event exceed 1.00 percent, and *provided* further that, notwithstanding anything to the contrary contained herein, if such Shelf Registration Statement is unusable for less than 30 days in the aggregate in any consecutive twelve-month period, the interest rate

borne by the Notes will not be increased pursuant to this sentence. Upon the Company declaring that the Shelf Registration Statement is usable after the interest rate has been increased pursuant to the preceding sentence, the interest rate borne by the Notes will be reduced to the original interest rate if the Company is otherwise in compliance with this paragraph; *provided, however,* that if after any such reduction in interest rate the Shelf Registration Statement again ceases to be usable beyond the period permitted above, the interest rate will again be increased and thereafter reduced pursuant to the foregoing provisions. Such additional interest on the Notes pursuant to this paragraph being "Special Interest".

Penalty Interest. If on any Determination Date after the first anniversary of the Issue Date the Debt Service Coverage Ratio is less than 1.75 to 1 and the Holding Company or Traffic Stream (China), as the case may be, has not, within 30 days afer the Calculation Date with respect to such determination Date, made a Capital Contribution in such an amount as would cause the Debt Service Coverage Ratio to be at least 1.75 to 1 on such Determination Date, then interest will accrue (in addition to the interest rate then borne by the Notes) at the rate of 2.00 per cent per annum on the then outstanding principal amount of the Notes, for a period from such Determination Date until a Capital Contribution is made which, if such capital contribution were included in the Company's Cash Flow for the period over which the Company's Debt Service Coverage Ratio is calculated on such Determination Date, would cause the Debt Service Coverage Ratio to equal or exceed 1.75 to 1 on such Determination Date (such additional interest, the "Penalty Interest"). The accrual of Penalty Interest shall be without prejudice to any other rights and remedies under the Indenture.

Additional Amounts. All payments of principal of, premium, if any, and interest (including Additional Interest, if any) on this Note will be made free and clear of, and without withholding or deduction for, any taxes, duties, assessments or governmental charges of whatever nature imposed, levied, collected, withheld or assessed by or within the British Virgin Islands, the PRC or Hong Kong or any authority therein or thereof having power to tax, unless such withholding or deduction is required by law or by regulation or governmental policy having the force of law. In the event that any such withholding or deduction in respect of principal, premium or interest is so required, the Company shall pay such additional amounts ("Additional Amounts") as will result in receipt by each holder of any Note of such amounts as would have been received by such holder or the beneficial owner with respect to such Note had no such withholding or deduction been required, except that no Additional Amounts shall be payable:

(a) for or on account of:

(1) any tax, duty, assessment or other governmental charge that would not have been imposed but for

(A) the existence of any present or former connection between such holder or the beneficial owner of such Note and the British Virgin Islands other than merely holding such Note or receiving payments or enforcing rights in respect thereof, including, without limitation,

such holder or the beneficial owner of such Note being or having been a national, domiciliary or resident of or treated as a resident thereof or being or having been present or engaged in a trade or business therein or having or having had a permanent establishment therein; or

(B) the presentation of such Note (where presentation is required) more than 30 days after the date on which the payment in respect of such Note became due and payable or provided for, whichever is later, except to the extent that such holder would have been entitled to such Additional Amounts if it had presented such Note for payment on any day within such period of 30 days;

(2) any estate, inheritance, gift, sale, transfer, personal property or similar tax, assessment or other governmental charge;

(3) any tax, assessment or other governmental charge that is imposed or withheld by reason of the failure of such holder or the beneficial owner of such Note to comply with a request by the Company addressed to such holder (A) to provide information concerning the nationality, residence or identity of such holder or such beneficial owner or (B) to make any declaration or other similar

claim or satisfy any information or reporting requirement, which, in the case of (A) or (B), is required or imposed by a statute, treaty, regulation or administrative practice of the taxing jurisdiction as a precondition to exemption from all or part of such tax, assessment or other governmental charge; or

(4) any combination of items (1), (2) and (3); or

(b) with respect to any payment of the principal of, premium, if any, or interest on such Note to such holder (including a fiduciary or partnership) to the extent that the beneficial owner of such Note would not have been entitled to such Additional Amounts had it been the holder of the Note.

Other. Whenever there is mentioned, in any context, the payment of principal, premium or interest in respect of any Note or the net proceeds received on the sale or exchange of any Note, such mention shall be deemed to include the payment of Additional Amounts provided for in the Indenture to the extent that, in such context, Additional Amounts are, were or would be payable in respect thereof pursuant to the Indenture.

Interest on this Note will accrue from the most recent date to which interest has been paid or, if no interest has been paid, from May 6, 1998; *provided* that, if there is no existing default in the payment of interest and if this Note is authenticated between a Regular Record Date referred to on the face hereof and the next succeeding Interest Payment Date, interest shall

accrue from such Interest Payment Date. Interest will be computed on the basis of a 360-day year comprised of twelve 30-day months.

The Company shall pay interest on overdue principal and premium, if any, and interest on overdue installments of interest, to the extent lawful, at a rate per annum equal to the rate of interest applicable to the Notes.

2. *Method of Payment.*

The Company will pay interest (except defaulted interest) on the principal amount of the Notes on each May 1 and November 1 to the persons who are Holders (as reflected in the Note Register at the close of business on the April 15 and October 15 immediately preceding such Interest Payment Date), in each case, even if the Note is cancelled on registration of transfer or registration of exchange after such record date; *provided* that, with respect to the final payment of principal, the Company will make payment to the Holder that surrenders this Note to any Paying Agent on or after May 1, 2006.

The Company will pay principal, premium, if any, and interest in money of the United States that at the time of payment is legal tender for payment of public and private debts. However, except in the case of Notes in global form, the Company may pay principal, premium, if any, and interest by its check payable in such money. The Company may mail an interest check to a Holder's registered address (as reflected in the Note Register). If a payment date is a date other than a Business Day at a place of payment, payment may be made

at that place on the next succeeding day that is a Business Day and no interest shall accrue for the intervening period.

3. *Paying Agent and Note Registrar.*

Initially, the Trustee will act as Transfer Agent, Paying Agent and Note Registrar. The Company has also appointed Chase Manhattan Bank Luxembourg S.A. as Paying Agent in Luxembourg. The Company may change any Paying Agent, Transfer Agent or Note Registrar upon written notice thereto. The Company, any Subsidiary or any Affiliate of any of them may act as Paying Agent, Note Registrar or co-registrar.

4. *Indenture; Limitations.*

The Company issued the Notes under an Indenture dated as of May 6, 1998 (the "Indenture"), among the Company and The Chase Manhattan Bank, as trustee (the "Trustee") and Chase Manhattan Bank Luxembourg S.A. as Paying Agent in Luxembourg. Capitalized terms herein are used as defined in the Indenture unless otherwise indicated. The terms of the Notes include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act. The Notes are subject to all such terms, and Holders are referred to the Indenture and the Trust Indenture Act for a statement of all such terms. To the extent permitted by applicable law, in the event of any inconsistency between the terms of this Note and the terms of the Indenture, the terms of the Indenture shall control.

The Notes are general obligations of the Company. The Indenture limits the aggregate principal amount of the Notes to US$119,000,000.

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5. *Redemption.*

Optional Tax Redemption. If as a result of any change in or amendment to the laws, treaties, regulations or rulings of the British Virgin Islands, the PRC or Hong Kong (or of any political subdivision or taxing authority thereof or therein), or any change in official position regarding the application or interpretation of such laws, treaties, regulations or rulings (including a holding, judgment or order by a court of competent jurisdiction), which is proposed or becomes effective on or after the Issue Date or which, in the case of any change in any such official position, shall have become available to the public on or after the Issue Date, in making any payment due or to become due under the Notes or the Indenture, the Company is or would be required on or prior to the next succeeding Interest Payment Date to pay Additional Amounts, the Notes may be redeemed at the option of the Company, in whole but not in part, upon not less than 30 nor more than 60 days' notice given as provided in the Indenture, at any time, at a redemption price equal to the principal amount thereof, plus accrued and unpaid interest to the date fixed for redemption; *provided* that no such notice of redemption shall be given earlier than 90 days prior to the earliest date on which the Company would be obligated to make such withholding if a payment in respect of the Notes were then due. The Company will also pay to holders of the Notes on the redemption date any Additional Amounts which are payable.

Prior to the giving of any notice of redemption in accordance with the foregoing, the Company shall deliver to the Trustee an Officer's Certificate stating that the Company

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is entitled to effect such redemption based on an Opinion of Counsel or written advice of a qualified tax expert that the Company has or will become obligated to pay Additional Amounts as a result of such change or amendment. Such notice, once delivered by the Company or to the Trustee, will be irrevocable.

Optional Redemption. Except as set forth under "Optional Tax Redemption" above, the Notes will not be redeemable at the option of the Company prior to May 1, 2003. On or after such date, the Notes will be redeemable in whole, but not in part, upon not more than 60 nor less than 30 days' notice to the Noteholders and not less than 45 days' notice to the Trustee, at any time at the option of the Company, at the redemption prices (expressed as percentages of principal amount) set forth below, plus accrued and unpaid interest (including Additional Interest, if any), and any Additional Amounts due thereon, to the date of redemption, if redeemed during the 12 month period beginning May 1 of the years indicated below:

During Year	**Percentage**
2003	108.000%
2004	105.000%
2005	102.000%
2006	100.000%

All Notes redeemed shall be cancelled.

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Mandatory Redemption. The Notes will be redeemed on each Mandatory Redemption Date in the amounts and at the redemption prices (expressed as percentages of principal amount) set out below. The aggregate principal amount of Notes to be so redeemed shall be an amount equal to the product of (i) the percentage set out under the heading "Percentage of Principal Amount" below multiplied by (ii) (A) the original aggregate principal amount of Notes issued on the Issue Date minus (B) the aggregate principal amount of Notes which have been cancelled on or prior to the 45th day preceding such Mandatory Redemption Date.

Mandatory Redemption Date	**Percentage of Principal Amount**	**Redemption Price**
May 1, 2001	5.88%	108.000%
November 1, 2001	5.88	108.000
May 1, 2002	6.72	108.000
November 1, 2002	6.72	108.000
May 1, 2003	7.56	108.000
November 1, 2003	7.56	108.000
May 1, 2004	7.56	108.000
November 1, 2004	7.56	108.000
May 1, 2005	8.40	108.000
November 1, 2005	9.66	100.000
May 1, 2006	*	100.000

* remaining principal amount of Notes outstanding to be redeemed

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6. *Repurchase Upon a Change of Control.*

Upon the occurrence of a Change of Control, the Company will be required to make an offer to purchase on the Change of Control Payment Date all Outstanding Notes at a purchase price in cash equal to 101% of the aggregate principal amount thereof, plus accrued and unpaid interest thereon, if any, to the date of purchase in accordance with the Indenture.

7. *Denominations Transfer; Exchange.*

Notes are in registered form without coupons, in denominations of $1,000 and any integral multiple thereof. A Holder may register the transfer or exchange of Notes in accordance with the Indenture. The Note Registrar may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and to pay any taxes and fees required by law or permitted by the Indenture.

8. *Discharge Prior to Redemption or Maturity.*

The Indenture contains provisions for defeasance at any time of (a) the entire indebtedness of the Company on this Note and (b) certain restrictive covenants and the related Defaults and Events of Default, upon compliance by the Company with certain conditions set forth therein, which provisions apply to this Note.

9. *Amendment; Supplement; Waiver.*

The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of

the rights and obligations of the Company and the rights of the Holders under the Indenture and the Notes, at any time by the Company and the Trustee with the consent of the Holders of a specified percentage in aggregate principal amount of the Notes at the time Outstanding. The Indenture also contains provisions permitting the Holders of specified percentages in aggregate principal amount of the Notes at the time Outstanding, on behalf of the Holders of all the Notes, to waive compliance by the Company with certain provisions of the Indenture and the Notes and certain past defaults under the Indenture and the Notes, and their consequences. Any such consent or waiver by or on behalf of the Holder of this Note shall be conclusive and binding upon such Holder and upon all future Holders of this Note and of any Note issued upon the registration of transfer hereof or in exchange herefor or in lieu hereof whether or not notation of such consent or waiver is made upon this Note.

10. *Restrictive Covenants.*

The Indenture contains certain covenants, including, without limitation, covenants with respect to the following matters: (i) Limitation on Indebtedness; (ii) Limitation on Restricted Payments; (iii) Limitation on Distribution from Restricted Subsidiaries; (iv) Limitation on Transactions with Affiliates; (v) Limitation on Liens; (vi) Limitation on Sales of Assets; (vii) Limitation on Nature of Business of the Company, the Hong Kong Holding Companies and the Toll Road Joint Ventures; (viii) Maintenance of Insurance; (ix) Limitation on Ownership of Interests in Toll Road Joint Ventures; (x) Maintenance of Ownership in subsidiaries and Joint Ventures; (xi) Maintenance of Ownership in Company;

(xii) Operation and Maintenance; Engineering Reports; Audit of Toll Collection System; (xiii) Government Approvals; Compliance with Laws; (xiv) Change of Control; (xv) Taxes; (xvi) Annual and Interim Reports; (xvii) merger and certain transfers of assets; (xviii) Maintenance of Debt Service Coverage Ratio; (xix) Disposition of Non-Project Toll Road Joint Ventures and (xx) Installation and Certification of Computerized Ticketing Systems; Relocation of Toll Booth. The Company must furnish to the Trustee annual and semiannual statements as to the compliance by the Company with such limitations.

11. *Successor Persons.*

When a successor person or other entity assumes all the obligations of its predecessor under the Notes and the Indenture, the predecessor person will be released from those obligations.

12. *Remedies for Events of Default.*

If an Event of Default, as defined in the Indenture, occurs and is continuing, the Trustee or the Holders of not less than 25% in principal amount of the Notes then Outstanding may declare all the Notes to be immediately due and payable. If a bankruptcy or insolvency default with respect to the Company or any of its Subsidiaries occurs and is continuing, the Notes automatically become immediately due and payable. Holders may not enforce the Indenture or the Notes except as provided in the Indenture. The Trustee may require indemnity satisfactory to it before it enforces the Indenture or the Notes. Subject to certain limitations, Holders of at least a majority

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in principal amount of the Notes then Outstanding may direct the Trustee in its exercise of any trust or power.

THIS NOTE AND THE INDENTURE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

All terms used in this Note which are defined in the Indenture shall have the meanings assigned to them in the Indenture.

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EXHIBIT B

FORM OF TRANSFER CERTIFICATE FOR TRANSFER FROM RULE 144A GLOBAL NOTE TO REGULATION S GLOBAL NOTE (TRANSFERS PURSUANT TO SECTION 3 OF THE INDENTURE)

The Chase Manhattan Bank
as Trustee
Global Trust Services
450 West 33rd Street
Fifteenth Floor
New York, New York 10001-2697

Re: *Traffic Stream (BVI) Infrastructure Limited (the "Company") 14¼% Senior Secured Notes due 2006*

Ladies and Gentlemen:

Reference is hereby made to the Indenture dated as of May 6, 1998 (the "Indenture) between Traffic Stream (BVI) Infrastructure Limited (the "Company"), as Issuer and The Chase Manhattan Bank, as Trustee. Capitalized terms used but not defined herein shall have the meanings given to them in the Indenture.

This letter relates to US$[ ] aggregate principal amount of Notes which are evidenced by a Rule 144A Global Note (CUSIP No._____) and held with the Depositary in the name of [insert name of transferor] (the "Transferor"). The Transferor has requested a transfer of such beneficial

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interest in the Rule 144A Global Note to a person who will take delivery thereof in the form of an equal aggregate principal amount of Notes evidenced by a Regulation S Global Note of the same series and of like tenor as the Notes (CUSIP No._____).

In connection with such request and in respect of such Notes, the Transferor does hereby certify that such transfer has been effected pursuant to and in accordance with Rule 903 or Rule 904 under the United States Securities Act of 1933, as amended (the "Securities Act"), and accordingly the Transferor does hereby further certify that:

(1) the offer of the Notes was not made to a person in the United States;

(2) either (a) at the time the buy order was originated, the transferee was outside the United States or the Transferor and any person acting on its behalf reasonably believed that the transferee was outside the United States or (b) the transaction was executed in, on or through the facilities of a Designated Offshore Securities Market and neither the Transferor nor any person acting on its behalf knows that the transaction was prearranged with a buyer in the United States;

(3) no directed selling efforts have been made in contravention of the requirements of Rule 903(b) or Rule 904(b) of Regulation S, as applicable; and

(4) the transaction is not part of a plan or scheme to evade the registration requirements of the Securities Act.

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This certificate and the statements contained herein are made for your benefit and the benefit of the Company and the Initial Purchaser. Terms used in this certificate and not otherwise defined herein or in the Indenture have the meanings set forth in Regulation S under the Securities Act.

[Insert Name of Transferor]

By: _____
Name:
Title:

Dated: _____

cc: Traffic Stream (BVI) Infrastructure Limited

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EXHIBIT C

FORM OF TRANSFER CERTIFICATE FOR TRANSFER FROM REGULATION GLOBAL NOTE TO RULE 144A GLOBAL NOTE (TRANSFERS PURSUANT TO SECTION ● OF THE INDENTURE)

_____, __

The Chase Manhattan Bank
as Trustee
Global Trust Services
450 West 33rd Street
Fifteenth Floor
New York, New York 10001-2697

Re: *Traffic Stream (BVI) Infrastructure Limited (the "Company") 14¼% Senior Secured Notes due 2006 (the "Notes")*

Ladies and Gentlemen:

Reference is hereby made to the Indenture, dated as of May 6, 1998 (the "Indenture) between Traffic Stream (BVI) Infrastructure Limited (the "Company"), as Issuer and The Chase Manhattan Bank, as Trustee. Capitalized terms used but not defined herein shall have the meanings given to them in the Indenture.

This letter relates to US$[ ] aggregate principal amount of Notes which are evidenced by a Regulation S

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Global Note (CUSIP No._____) and held with the U.S. Depositary through Euroclear or Cedel or both (Common Code [ ]) in the name of [insert name of transferor] (the "Transferor"). The Transferor has requested a transfer of such beneficial interest in the Regulation S Global Note to a person who will take delivery thereof in the form of an equal aggregate principal amount of Notes evidenced by a Rule 144A Global Note of the same series and of like tenor as the Notes (CUSIP No._____). The Transferor has informed such person that he is obtaining an interest in a Note that is subject to restrictions on transfer and that each subsequent transferee should be so informed.

In connection with such request and in respect of such Notes, the Transferor does hereby certify that such transfer has been effected pursuant to and in accordance with Rule 144A under the United States Securities Act of 1933, as amended (the "Securities Act"), and accordingly the Transferor does hereby further certify that the Notes are being transferred to a person that the Transferor reasonably believes is purchasing the Notes for its own account, or for one or more accounts with respect to which such person exercises sole investment discretion, and such person and each such account is a "qualified institutional buyer" within the meaning of Rule 144A under the Securities Act, in each case in a transaction meeting the requirements of Rule 144A and in accordance with any applicable securities laws of any state of the United States.

The Transferor further certifies that it is not an "affiliate" of the Company within the meaning of the Securities Act.

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This certificate and the statements contained herein are made for your benefit and the benefit of the Company and the Initial Purchaser.

[Insert Name of Transferor]

By: _____
Name:
Title:

Dated: _____

cc: Traffic Stream (BVI) Infrastructure Limited

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EXHIBIT D

FORM OF SUBORDINATION AGREEMENT

(i) so long as an Event of Default under the Notes has occurred and is continuing, the subordinated creditors will not ask, demand, sue for, take or receive from the Company, directly or indirectly, in cash or other property or by set-off, purchase, acquisition or redemption or in any other manner, payment for any of the obligations under the Subordinated Indebtedness until all obligations of the Company under the Notes shall have been paid in full; and

(ii) at any time before all obligations under the Notes shall have been paid in full, the creditors under the Subordinated Indebtedness will not commence, or join with any other creditors in commencing, any bankruptcy, insolvency, liquidation or similar proceedings to enforce or collect on any obligations under the Subordinated Indebtedness or accelerate the maturity of all or any of the obligations under the Subordinated Indebtedness.

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EXHIBIT B TO COMPLAINT — LETTER OF CREDIT PROCUREMENT AND DEPOSIT AGREEMENT

LETTER OF CREDIT PROCUREMENT AND DEPOSIT AGREEMENT

This LETTER OF CREDIT PROCUREMENT AND DEPOSIT AGREEMENT (this "Agreement") dated May 6, 1998 made by and among Traffic Stream Infrastructure Holdings Company Limited, a corporation incorporated under the laws of Bermuda ("Holdings,"), Traffic Stream (China) Infrastructure Company Limited, a corporation incorporated under the laws of the British Virgin Islands ("Traffic Stream (China)"), Mr. Ng Hon Leung, holder of Hong Kong identity card number P 199905(6), China Nonferrous Metals Holdings (Hong Kong) Limited, a corporation incorporated under the laws of Hong Kong ("CNMH") and Traffic Stream (BVI) Infrastructure Limited, a corporation incorporated under the laws of the British Virgin Islands (the 'Issuer"). Unless otherwise defined herein, terms used herein shall have the meanings ascribed thereto in the Indenture (as defined below).

WHEREAS the Issuer has issued on the date hereof US$119,000,000 aggregate principal amount of its 14¼% Senior Secured Notes due 2006 pursuant to the terms of an indenture dated the date hereof by and between the Issuer and The Chase Manhattan Bank, as trustee (the "Indenture"); and

WHEREAS all of the issued and outstanding capital stock of the Issuer is owned by Traffic Stream (China); and

WHEREAS Holdings proposes to acquire all of the issued and outstanding capital stock of Traffic Stream (China); and

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WHEREAS Mr. Ng Hon Leung and his spouse beneficially own a majority of the issued and outstanding capital stock of the Issuer; and

WHEREAS CNMH beneficially owns approximately 20% of the issued and outstanding capital stock of the Issuer.

NOW THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

SECTION 1. *Aereement to Procure Letter of Credit.* (a) Each of Holdings, Traffic Stream (China), Mr. Ng Hon Leung and CNMH hereby undertakes and agrees, jointly and severally, to procure the issuance of a letter of credit meeting the requirements of Section 1(b) (the "Letter of Credit") and to deliver such Letter of Credit to the Trustee on or before January 6, 1999.

(b) The Letter of Credit shall:

(i) be an irrevocable standby letter of credit issued in favor of the Trustee,

(ii) be issued by a bank having an investment grade long term debt rating or an investment grade deposit rating (which ratings may be based on publicly available information) either provided by S&P (or any successor thereto) or by Moody's (or any successor thereto), *provided* that, if a bank is not rated by either S&P or Moody's (or a successor

of either of them), for purposes hereof such bank shall be deemed to have the long term debt rating or deposit rating of its parent (if rated), and *provided, further* that a bank shall be deemed not to have an investment grade rating for purposes hereof if its long term debt rating (or, if not available, that of its parent) or its deposit rating is rated non-investment grade by either S&P or Moody's (for purposes hereof investment grade rating means a rating of "BBB" or above by S&P or a rating of "Baa2" or above by Moody's),

(iii) be denominated in United States Dollars in a stated amount equal to US$8,058,750.00,

(iv) be reduced by the amount of each drawing thereunder,

(v) provide that it may be drawn on by the Trustee (A) at any time prior to the deposit having been made pursuant to Section 2 hereof (x) if there exists and is continuing an Event of Default under the Indenture, (y) at the direction of the Issuer to meet any additional costs incurred in connection with the completion of the Toll Roads Under Development, or (z) at the direction of the Issuer to make the deposit referred to in Section 2 hereof, or (B) if there has not been deposited into the Construction Funding Account by May 6, 1999 the amount required to be deposited pursuant to Section 2 hereof,

(vi) provide that it will not terminate prior to the earlier of (a) the date on which the Letter of Credit has been fully drawn and (b) the date of the deposit made pursuant to Section 2 hereof.

(c) Delivery of the Letter of Credit to the Trustee shall be accompanied by an officer's Certificate of the Issuer stating that such Letter of Credit satisfies the requirements of and is in compliance with the provisions of this Agreement.

(d) Notwithstanding the foregoing, the obligation of Holdings, Traffic Stream (China), Mr. Ng Hon Leung and CNMH to procure and deliver the Letter of Credit shall terminate at such time as Holdings, Traffic Stream (China) or Mr. Ng Hon Leung has deposited the amount required to be deposited into the Construction Funding Account pursuant to Section 2 hereof.

SECTION 2. *Deposit into Construction Funding Account.* Each of Traffic Stream (China) and Holdings hereby undertakes and agrees, jointly and severally, to deposit into the Construction Funding Account, in United States Dollars, an aggregate amount of US$8,058,750.00 on or before May 6, 1999, which amount shall be reduced by any amount drawn under the Letter of Credit pursuant to Section 1(b)(v)(A)(y) or (z) hereof.

SECTION 3. *Personal Guarantee.* Mr. Ng Hon Leung hereby personally, unconditionally and irrevocably guarantees the prompt deposit into the Construction Funding Account of all amounts to be so deposited by Traffic Stream (China) and Holdings under Section 2 of this Agreement.

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SECTION 4. *Representations and Warranties of Holdings.* In connection with the agreement contained herein, Holdings hereby represents and warrants as follows:

(i) Holdings has been duly organized and incorporated as a company with limited liability and is validly existing under the laws of Bermuda and has corporate power and authority to own, lease and operate its properties and to conduct its business as currently conducted and to enter into and perform its obligations under this Agreement. Holdings is duly qualified as a foreign corporation to transact business and is in good standing in each other jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except where the failure so to qualify or to be in good standing would not have a material adverse effect on the condition, financial or otherwise, or on the earnings, shareholders' equity, business affairs, operations or business prospects of Holdings.

(ii) *Authorization of this Agreement.* This Agreement has been duly authorized, executed and delivered by Holdings and constitutes a valid and binding obligation of Holdings, enforceable against Holdings in accordance with its terms, except as enforcement thereof may be limited by bankruptcy, insolvency (including, without limitation, all laws relating to fraudulent transfers), reorganization, moratorium or similar

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laws now or hereafter in effect relating to or affecting enforcement of creditors' rights generally and except as enforcement thereof is subject to general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law).

(iii) *Absence of Defaults and Conflicts.* Holdings is not in violation of its charter, by-laws or other organizational documents or in default in the performance or observance of any obligation, agreement, covenant or condition contained in any contract, indenture, Mortgage, deed of trust, loan or credit agreement, note, lease or other agreement or instrument to which Holdings is a parry or by which Holdings may be bound, or to which any of the property or assets of Holdings is subject (collectively, as used in this paragraph, "Agreements and Instruments") except for such defaults that would not have a material adverse effect on the condition, financial or otherwise, or on the earnings, shareholders' equity, business affairs, operations or business prospects of Holdings; and the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated herein and the compliance by Holdings with its obligations hereunder have been duly authorized by all necessary corporate action and do not and will not, whether with or without the giving of notice or passage of time or both, conflict with or constitute a breach of, or default or a Repayment

Event (as defined below) under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of Holdings or any of its subsidiaries pursuant to, the Agreements and Instruments except for such conflicts, breaches or defaults or liens, charges, encumbrances or violations that, singly or in the aggregate, would not have a material adverse effect on Holdings' ability to perform its obligations hereunder, nor will such action result in any violation of the provisions of the charter, by-laws or other organizational documents of Holdings or violate any applicable law, statute, rule, regulation, judgment, order, writ or decree of any government, government instrumentality or court, domestic or foreign, having jurisdiction over Holdings or any of its subsidiaries or any of their assets, properties or operations. As used herein, a "Repayment Event" means any event or condition which gives the holder of any note, debenture or other evidence of indebtedness (or any person acting on such holder's behalf) the right to require the repurchase, redemption or repayment of all or a portion of such indebtedness by the obligor thereunder or any of its subsidiaries.

SECTION 5. *Representations and Warranties of Traffic Stream (China).* In connection with the agreement contained herein, Traffic Stream (China) hereby represents and warrants as follows:

(i) Traffic Stream (China) has been duly organized and incorporated as a company with

limited liability and is validly existing under the laws of the British Virgin Islands and has corporate power and authority to own, lease and operate its properties and to conduct its business as currently conducted and to enter into and perform its obligations under this Agreement. Traffic Stream (China) is duly qualified as a foreign corporation to transact business and is in good standing in each other jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except where the failure so to qualify or to be in good standing would not have a material adverse effect on the condition, financial or otherwise, or on the earnings, shareholders' equity, business affairs, operations or business prospects of Traffic Stream (China).

(ii) *Authorization of this Agreement.* This Agreement has been duly authorized, executed and delivered by Traffic Stream (China) and constitutes a valid and binding obligation of Traffic Stream (China), enforceable against Traffic Stream (China) in accordance with its terms, except as enforcement thereof may be limited by bankruptcy, insolvency (including, without limitation, all laws relating to fraudulent transfers), reorganization, moratorium or similar laws now or hereafter in effect relating to or affecting enforcement of creditors' rights generally and except as enforcement thereof is subject to general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law).

(iii) *Absence of Defaults and Conflicts.* Traffic Stream (China) is not in violation of its charter, by-laws or other organizational documents or in default in the performance or observance of any obligation, agreement, covenant or condition contained in any contract, indenture, mortgage, deed of trust, loan or credit agreement, note, lease or other agreement or instrument to which Traffic Stream (China) is a party or by which Traffic Stream (China) may be bound, or to which any of the property or assets of Traffic Stream (China) is subject (collectively, as used in this paragraph, "Agreements and Instruments") except for such defaults that would not have a material adverse effect on the condition, financial or otherwise, or on the earnings, shareholders' equity, business affairs, operations or business prospects of Traffic Stream (China); and the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated herein and the compliance by Traffic Stream (China) with its obligations hereunder have been duly authorized by all necessary corporate action and do not and will not, whether with or without the giving of notice or passage of time or both, conflict with or constitute a breach of, or default or a Repayment Event under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of Traffic Stream (China) or any of its subsidiaries pursuant to, the Agreements and Instruments except for such conflicts, breaches or defaults or

liens, charges, encumbrances or violations that, singly or in the aggregate, would not have a material adverse effect on Traffic Stream (China)'s ability to perform its obligations hereunder, nor will such action result in any violation of the provisions of the charter, by-laws or other organizational documents of Traffic Stream (China) or violate any applicable law, statute, rule, regulation, judgment, order, writ or decree of any government, government instrumentality or court, domestic or foreign, having jurisdiction over Traffic Stream (China) or any of its subsidiaries or any of their assets, properties or operations.

SECTION 6. *Representations, Warranties and Covenants of CNMH.* In connection with the agreement contained herein, CNMH hereby represents, warrants and covenants as follows:

(i) CNMH has been duly organized and incorporated as a company with limited liability and is validly existing under the laws of Hong Kong and has corporate power and authority to own, lease and operate its properties and to conduct its business as currently conducted and to enter into and perform its obligations under this Agreement. CNMH is duly qualified as a foreign corporation to transact business and is in good standing in each other jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except where the failure so to qualify or to be in good standing would not

have a material adverse effect on the condition, financial or otherwise, or on the earnings, shareholders' equity, business affairs, operations or business prospects of CNMH.

(ii) *Authorization of this Agreement.* This Agreement has been duly authorized, executed and delivered by CNMH and constitutes a valid and binding obligation of CNMH, enforceable against CNMH in accordance with its terms, except as enforcement thereof may be limited by bankruptcy, insolvency (including, without limitation, all laws relating to fraudulent transfers), reorganization, moratorium or similar laws now or hereafter in effect relating to or affecting enforcement of creditors' rights generally and except as enforcement thereof is subject to general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law).

(iii) *Absence of Defaults and Conflicts.* CNMH is not in violation of its charter, by-laws or other organizational documents or in default in the performance or observance of any obligation, agreement, covenant or condition contained in any contract, indenture, mortgage, deed of trust, loan or credit agreement, note, lease or other agreement or instrument to which CNMH is a party or by which CNMH may be bound, or to which any of the property or assets of CNMH is subject (collectively, as used in this paragraph, "Agreements and Instruments") except for such defaults that would

not have a material adverse effect on the condition, financial or otherwise, or on the earnings, shareholders' equity, business affairs, operations or business prospects of CNMH; and the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated herein and the compliance by CNMH with its obligations hereunder have been duly authorized by all necessary corporate action and do not and will not, whether with or without the giving of notice or passage of time or both, conflict with or constitute a breach of, or default or a Repayment Event under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of CNMH or any of its subsidiaries pursuant to, the Agreements and Instruments except for such conflicts, breaches or defaults or liens, charges, encumbrances or violations that, singly or in the aggregate, would not have a material adverse effect on CNMH's ability to perform its obligations hereunder, nor will such action result in any violation of the provisions of the charter, by-laws or other organizational documents of CNMH or violate any applicable law, statute, rule, regulation, judgment, order, writ or decree of any government, government instrumentality or court, domestic or foreign, having jurisdiction over CNMH or any of its subsidiaries or any of their assets, properties or operations.

(iv) As of the date hereof, no proceedings have been commenced or are contemplated for the merger

consolidation, reorganization, dissolution or liquidation of the Company, nor has there been commenced or threatened any such action or proceeding.

(v) CNMH shall not enter into a Merger unless at the time and immediately after giving effect thereto either (A) CNMH will be the surviving corporation or (B) the Person (if other than CNMH) formed by such Merger or into which CNMH or CNMH and its subsidiaries is merged or the Person that acquires as a result of such Merger all or substantially all the properties and assets of CNMH or CNMH and its subsidiaries, as the case may be, shall expressly assume CNMH's obligations hereunder.

"Merger" means a single transaction or a series of related transactions whereby CNMH consolidates with or merges with or into any other Person or sells, assigns, conveys, transfers, leases or otherwise disposes of all or substantially all of its properties and assets as an entirety to any Person or Persons or permits any subsidiary to enter into any such transaction or series of transactions if such transaction or series of transactions, in the aggregate, would result in the sale, assignment, conveyance, transfer, lease or other disposition of all or substantially all of the properties and assets of CNMH and its subsidiaries on a consolidated basis to any Person or Persons.

SECTION 7. *Amendments*. Neither this Agreement nor any of the terms hereof may be amended unless such amendment is in writing and signed by each of the parties hereto.

SECTION 8. *Notices*. (a) Any notice, agreement, consent or other communication under or in connection with this Agreement shall be in writing, delivered personally or by prepaid letter (by airmail, if to an address in another country) or facsimile transmission addressed to the relevant party at its correspondence address or facsimile number from time to time notified by a party to the others.

(b) Any notice or other communication to be given, made or served pursuant to or for any purpose of this Agreement shall be in writing and may be delivered personally or sent by letter (postage prepaid and by airmail if to another country), or facsimile transmission and shall be deemed given, made or served, if delivered personally, when left at the relevant address or, if sent by letter, two Hong Kong business days (or 7 business days if by airmail) after being put in the post or if sent by facsimile transmission, on the next working day in the place to which it is sent and in proving service of any notice it shall be sufficient to prove that the notice was properly directed or addressed and delivered or sent.

SECTION 9. *No Third Party Beneficiaries*. This Agreement is not intended to confer upon any Person (including without limitation any holder of a Note, the Trustee or the Collateral Agent) other than the parties hereto any rights or remedies hereunder or otherwise benefit any such Person.

SECTION 10. *Process Agent*. Each of Holdings, Traffic Stream (China) and the Issuer hereby irrevocably

appoints South-East Asia Investment Holding Co. Ltd. (at its registered office for the time being in Hong Kong) to be their process agent with authority to accept, on their behalf, the service of legal process issued out of the courts of the Hong Kong Special Administrative Region in any legal action arising out of or in connection with this Agreement. Each of Holdings, Traffic Stream (China) and the Issuer hereby irrevocably authorizes the Trustee, in the event of the process agent hereby appointed ceasing to be available in Hong Kong for the purpose of accepting the service of legal process, from time to time to designate for such purpose any other person in Hong Kong selected by the Trustee unless Holdings, Traffic Stream (China) or the Issuer shall have designated some other person for such purpose acceptable to the Trustee.

SECTION 11. *Submission to Hong Kong Jurisdiction.* Each of the parties hereto hereby irrevocably submits to the non-exclusive jurisdiction of the courts of the Hong Kong Special Administrative Region. Such submission to the jurisdiction of the courts of the Hong Kong Special Administrative Region shall not limit the right of any party hereto to take proceedings in the courts of any other country having, claiming or accepting jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in another jurisdiction.

SECTION 12. *Governing Law.* THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA.

IN WITNESS-WHEREOF, the parties have each caused this Agreement duly executed and delivered as a deed as of the date first above written.

The Common Seal of Traffic Stream)
Infrastructure Holdings Co. Ltd. was)
hereonto affixed in the presence of:)

The Common Seal of Traffic Stream)
(China) Infrastructure Co. Ltd. was)
hereonto affixed in the presence of:)

SIGNED SEALED and DELIVERED)
By Mr. Ng Hon Leung)
in the presence of:)

The Common Seal of China Nonferrous)
Metals Holdings (Hong Kong) Ltd. was)
hereonto affixed in the presence of:)

The Common Seal of Traffic Stream)
(BVI) Infrastructure Co. Ltd. was)
hereonto affixed in the presence of:)

Appendix C

[Filing Receipt Omitted]

APPENDIX D — AMENDED ANSWER DATED AUGUST 6, 1999

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

99 Civ. 4056 (SAS)

THE CHASE MANHATTAN BANK, AS INDENTURE TRUSTEE, UNDER THE INDENTURE, DATED AS OF MAY 6, 1998,

Plaintiff,

-against-

TRAFFIC STREAM (BVI) INFRASTRUCTURE LIMITED,

Defendant.

AMENDED ANSWER

Defendant Traffic Stream (BVI) Infrastructure Limited, by its undersigned attorneys, answers the complaint, as follows:

1. Admits the allegations contained in paragraph 1 of the complaint.

2. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the complaint.

3. Admits the allegations contained in paragraph 3 of the complaint.

4. With respect to the allegations contained in paragraph 4 of the complaint, Defendant states that these allegations purport to characterize the nature of the complaint to which no response is required.

BACKGROUND

5. Admits the allegations contained in paragraph 5 of the complaint.

6. Admits the allegations contained in paragraph 6 of the complaint.

7. Admits the allegations contained in paragraph 7 of the complaint.

8. With respect to the allegations contained in paragraph 8 of the complaint, Defendant admits that it entered into the Indenture and respectfully refers to the Indenture for the full and complete provisions thereof.

9. With respect to the allegations contained in paragraph 9 of the complaint, Defendant admits that it entered into the Indenture and respectfully refers to the Indenture for the full and complete provisions thereof.

10. With respect to the allegations contained in paragraph 10 of the complaint, Defendant admits that it entered into the Indenture and respectfully refers to the Indenture for the full and complete provisions thereof.

11. With respect to the allegations contained in paragraph 11 of the complaint, Defendant admits that it entered into the Indenture and respectfully refers to the Indenture for the full and complete provisions thereof.

12. With respect to the allegations contained in paragraph 12 of the complaint, Defendant states that they purport to assert conclusions of law to which no response is required, except admits that the Trustee has possession of the Collateral.

13. With respect to the allegations contained in paragraph 13 of the complaint, Defendant admits that it entered into the Indenture and respectfully refers to the Indenture for the full and complete provisions thereof. Defendant further denies knowledge or information sufficient to from a belief as to the truth of the allegations made in the last sentence of paragraph 13.

14. Admit the allegations contained in the first two sentences of paragraph 14, and denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in the third sentence of paragraph 14.

15. With respect to the allegations contained in paragraph 15 of the complaint, Defendant admits that it entered into the Indenture and respectfully refers to the Indenture for the full and complete provisions thereof. Defendant further responds by denying knowledge and information sufficient to form a belief as to the truth of the allegations contained in the third sentence of paragraph 15.

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16. With respect to the allegations contained in paragraph 16 of the complaint, Defendant admits that it entered into the Indenture and respectfully refers to the Indenture for the full and complete provisions thereof. Defendants further responds by denying knowledge and information sufficient to form a belief as to the truth of the allegations contained in the third sentence of paragraph 16.

17. With respect to the allegations contained in paragraph 17 of the complaint, Defendant admits that it entered into the Indenture and respectfully refers to the Indenture for the full and complete provisions thereof.

18. With respect to the allegations contained in paragraph 18 of the complaint, Defendant admits that it entered into the Indenture and respectfully refers to the Indenture for the full and complete provisions thereof.

19. With respect to the allegations contained in paragraph 19 of the complaint, Defendant admits that it entered into the Indenture and respectfully refers to the Indenture for the full and complete provisions thereof.

20. With respect to the allegations contained in paragraph 20 of the complaint, Defendant admits that it entered into the Indenture and respectfully refers to the Indenture for the full and complete provisions thereof.

21. With respect to the allegations contained in paragraph 21 of the complaint, Defendant admits that it entered into the Indenture and respectfully refers to the Indenture for the full and complete provisions thereof.

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22. Admits the allegations contained in the first and second sentences of paragraph 22 of the complaint. With respect to the third sentence of paragraph 22, Defendant refers to the Indenture for the full and complete provisions thereof.

23. Admits the allegations contained in paragraph 23 of the complaint.

24. Admits the allegations contained in the first sentence of paragraph 24, and declines to respond to the second sentence of paragraph 24 on the grounds that it purports to assert legal conclusions to which no response is required.

25. Admits that it did not make the payments referred to in the first, second and third sentences of paragraph 25 of the complaint. With respect to the last sentence in paragraph 25, Defendant refers to the Indenture for the full and complete provisions thereof.

26. With respect to the allegations contained in paragraph 26 of the complaint, Defendant refers the court to the LOC Agreement for the full and complete provisions thereof.

27. Admits the first and second sentences of paragraph 27 of the complaint. With respect to the third sentence of paragraph 27, Defendant refers to the Indenture for the full and complete provisions thereof.

28. Declines to respond to the legal conclusions contained in paragraph 28 of the complaint, except admits that Defendant failed to deliver the LOC in full by January

6, 1999, there was an ensuing Declaration and respectfully refers to the documents referred to in paragraph 28 for the full and complete provisions thereof.

29. Admits to the allegations contained in paragraph 29 of the complaint.

30. With respect to paragraph 30 of the complaint, Defendant refers the court to the Indenture for the full and complete provisions thereof.

31. Denies having knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 31 of the complaint, except admits the first sentence of paragraph 31.

FIRST CAUSE OF ACTION

32. Defendant repeats and realleges its responses to paragraphs 1 through 31 of the complaint as though fully set forth herein.

33. Admits the allegations contained in paragraph 33 of the complaint.

34. Admits the allegations contained in paragraph 34 of the complaint, except that it was unable to deliver the Letter of Credit or to pay on the Notes.

35. With respect to the allegations contained in paragraph 35 of the complaint, Defendant refers the court to the Indenture for the full and complete provisions thereof.

36. With respect to the allegations contained in paragraph 36 of the complaint, Defendant states that no response is required.

37. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 37 of the complaint.

SECOND CAUSE OF ACTION

38. Defendant repeats and realleges its responses to paragraphs 1 through 37 of the complaint as though fully set forth herein.

39. With respect to the allegations contained in paragraph 39 of the complaint, Defendant states that they assert legal conclusions to which no response is required.

THIRD CAUSE OF ACTION

40. Defendant repeats and realleges its responses to paragraphs 1 through 39 of the complaint as though fully set forth herein.

41. Admits the allegations contained in paragraph 41 of the complaint.

42. Denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 42.

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43. With respect to the allegations contained in paragraph 43 of the complaint, Defendant refers the court to the Indenture for the full and complete provisions thereof.

44. With respect to paragraph 44 of the complaint, Defendant states that no response is required.

FOURTH CAUSE OF ACTION

45. Defendant repeats and realleges its responses to paragraphs 1 through 44 of the complaint as though fully set forth herein.

46. With respect to the allegations contained in paragraph 46 of the complaint, Defendant states that they assert legal conclusions to which no response is required.

47. Admits the allegations contained in the second and third sentences of paragraph 47 of the complaint, and declines to respond to the remaining allegations contained in paragraph 47 on the ground that they state legal conclusions to which no response is required.

48. Denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 48 of the complaint.

49. With respect to the allegations contained in paragraph 49 of the complaint, Defendant states that they assert legal conclusions to which no response is required.

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FIFTH CAUSE OF ACTION

50. Defendant repeats and realleges its responses to paragraphs 1 through 49 of the complaint as though fully set forth herein.

51. With respect to the allegations contained in paragraph 51 of the complaint, Defendant refers the court to the Indenture for the full and complete provisions thereof.

52. Denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 52 of the complaint.

AFFIRMATIVE DEFENSE

53. The Defendant, through its ownership in several subsidiaries (the "Subsidiaries"), owns interests in thirteen Chinese foreign cooperative joint ventures (the "Joint Ventures").

54. The Joint Ventures are engaged in the development, construction and operation of six toll road projects (the "Toll Roads Projects") in the People's Republic of China ("China").

55. The Defendant's interests in the Subsidiaries are the Defendant's sole assets and sole source of income.

56. The Joint Ventures are foreign investment enterprises under Chinese law, specifically China-Foreign Cooperative Joint Ventures ("CJVs").

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57. The distribution of funds from CJVs to their foreign partners or equity holders is regulated by Chinese law, and the conversion of such funds from local currency to foreign currency, such as the United States dollar, for remittance outside China is subject to foreign exchange regulations.

58. Under the contracts governing the Joint Ventures, the Defendant's Subsidiaries, as the foreign partners in the Joint Ventures, are guaranteed a fixed annual return on their investment in each Joint Venture. To the extent the income of a Joint Venture is insufficient to fund such guaranteed amounts, the shortfall is required to be contributed by the Chinese partner.

59. Prior to September 1998, local foreign exchange authorities, which are responsible for approving the remittance of distributions of CJVs (including the Joint Ventures), regularly permitted amounts derived from guaranteed payments by Chinese partners of the Joint Ventures to be converted into foreign currency and remitted outside China.

60. On September 14, 1998, the Chinese State Administration of Foreign Exchange ("SAFE") issued a notice that, among other things, provided strict standards for attracting foreign capital and measures to rectify and prevent the guarantee of the return on investment of foreign parties by Chinese joint venture partners.

61. As a consequence of the change in policy of the central Chinese Government regarding the remittance of distributions by CJVs and other Chinese-Foreign joint

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ventures, local authorities became more restrictive and take substantially more time to approve the remittance of foreign exchange outside China. Approval for the remittance of amounts attributable to guaranteed payments by Chinese joint venture partners in particular became especially difficult and was granted only after special approval from SAFE had been obtained.

62. The Defendant became incapable of making the payments required under the Indenture as a result of its Subsidiaries' inability to collect in a timely fashion the guaranteed payments from their Chinese partners due to the regulatory and policy changes under Chinese law.

63. The Defendant's alleged defaults under the Indenture are due to the regulatory and policy changes in China, are completely beyond the Defendant's control and were not within its reasonable anticipation.

64. The Defendant asserts that its alleged defaults under the Indenture are excused and discharged pursuant to the doctrine of impossibility of performance.

WHEREFORE, the Defendant respectfully requests that the Court dismiss the complaint and grant it such other and further relief as is just.

Dated: New York, New York
August 6, 1999

Appendix D

SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP
Attorneys for Traffic Stream (BVI)
Infrastructure Limited

By: s/ George A. Zimmerman
(A Member of the Firm)

George A. Zimmerman (GZ 6129)
Shmuel Vasser (SV 7400)
919 Third Avenue
New York, New York 10022
(212) 735-3000

To: Sara L Reid, Esq.
Kelley Drye & Warren LLP
101 Park Avenue
New York, New York 10178

APPENDIX E — JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK DATED MAY 9, 2000 ENTERED MAY 11, 2000

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

99 **CIVIL** 4056(SAS)

THE CHASE MANHATTAN BANK, AS INDENTURE TRUSTEE, UNDER THE INDENTURE, DATED AS OF MAY 6, 1998,

Plaintiff,

-against-

TRAFFIC STREAM (BVI) INFRASTRUCTURE LIMITED,

Defendant.

JUDGMENT

Whereas in an Opinion and Order dated February 2, 2000, the Court having granted summary judgment in plaintiff's favor and having ordered plaintiff to foreclose on certain Collateral Accounts and to submit a request for a deficiency judgment and the matter having come before the Honorable Shira A. Scheindlin, United States District Judge, and the Court, on May 8, 2000, having issued its Opinion and Order directing a deficiency judgment in the amount of $98,388,352.74 as against the defendant, it is,

Appendix E

ORDERED, ADJUDGED AND DECREED: That pursuant to the Court's Opinion and Order dated May 8, 2000, a deficiency judgment is entered in the amount of $98,388,352.74; the Court also finds that the value of certain additional collateral, namely pledged shares of four Hong Kong companies owned by defendant and/or its shareholders will be applied against the deficiency judgment when two conditions have been satisfied, specifically transfer of ownership and an adequate, independent valuation, the value of these companies.

DATED: New York, New York
May 9, 2000

JAMES M PARKISON:

_____
CLERK

BY: s/ [illegible]
DEPUTY CLERK

APPENDIX F — SUPPLEMENTAL LETTER BRIEF FOR DEFENDANT-APPELLANT DATED DECEMBER 11, 2000

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
FOUR TIMES SQUARE
NEW YORK 10036-6522
TEL: (212) 735-3000
FAX: (212) 735-2000
http://www.skadden.com

* * *

December 11, 2000

BY HAND

Hon. Joseph M. McLaughlin
Hon. Robert D. Sack
Hon. Robert N. Chatigny
United States Court of Appeals for the Second Circuit
United States Courthouse
40 Foley Square
New York, New York 10007

Re: The Chase Manhattan Bank v. Traffic Stream (BVI) Infrastructure Ltd., No. 00-7721
Alienage Jurisdiction

Dear Judges McLaughlin, Sack and Chatigny:

During oral argument in the above-captioned appeal held on Friday, December 1, 2000, the Court asked the parties to address the jurisdictional basis for the above-captioned action

in light of *Universal Reinsurance Co. v. St. Paul Fire & Marine Ins. Co.*, 224 F.3d 139 (2d Cir. 2000); *Koehler v. Bank of Bermuda (New York) Ltd.*, 209 F.3d 130 (2d Cir.), *as amended by* 229 F.3d 424 (2d Cir.), *reh'g in banc denied*, 229 F.3d 187 (2d Cir. 2000), and *Matimak Trading Co. v. Khalily*, 118 F.3d 76 (2d Cir. 1997), *cert. denied*, 522 U.S. 1091 (1998), and requested a written response no later than Monday, December 11, 2000.

As the Court noted, the subject matter jurisdictional nexus for this action is divined from the alienage jurisdiction provision of 28 U.S.C. § 1332. Section 1332 provides that when there is a civil action where the matter in controversy exceeds $75,000, and where the controversy is between "citizens of a State and citizens or subject of a foreign state," federal jurisdiction is present. 28 U.S.C. § 1332(a)(2).

In *Matimak v. Khalily*, 118 F.3d 76 (2d Cir. 1997), this Court, in a decision that reviewed and considered a myriad of precedents concerning this issue, reviewed the district court's decision to dismiss the action for lack of subject matter jurisdiction because the plaintiff, a Hong Kong corporation, was not a "citizen or subject of a foreign state" for purposes of alienage jurisdiction. Because Hong Kong — then a British Dependent Territory — had not been granted formal recognition by the Executive Branch, the Court concluded that it was not a "foreign state." *Id.* at 80-82. Nor was a Hong Kong corporation a citizen or subject of the United Kingdom. *Id.* at 85-86. Accordingly, the Court concluded that the plaintiff Hong Kong corporation was "stateless," and that alienage jurisdiction was therefore not available. *Id.* at 86-88.

The holding of *Matimak* was extended in *Koehler v. Bank of Bermuda (New York) Ltd.*, 209 F.3d 130 (2d Cir.), *as amended* 229 F.3d 424 (2d Cir.), *reh'g in banc denied*, 229 F.3d 187 (2d Cir. 2000), where the Court held that Bermuda citizens and Bermuda corporations are not citizens or subjects of a foreign state for purposes of alienage jurisdiction. As in *Matimak*, the Court concluded that because Bermuda — another British Dependent Territory — has not been recognized as a foreign state by the United States, its citizens are effectively stateless. Accordingly, because alienage jurisdiction was lacking, the Court affirmed dismissal of the state law claims against the Bermuda defendants. *Id.* at 139. Similarly, in *Universal Reinsurance Co. v. St. Paul Marine and Fire Ins. Co.*, 224 F.3d 139, 140-41 (2d Cir. 2000), the Court applied *Matimak* and *Koehler* and restated that citizens and corporations of Bermuda are not citizen or subjects of a foreign state for purposes of alienage jurisdiction.

Recently, in *New Heaven Properties Ltd. v. Grinberg*, No. 99 Civ. 11546, 2000 U.S. Dist LEXIS 706, *5-*8 (S.D.N.Y., Jan. 26, 2000) (unpublished memorandum and order, a copy of *New Heaven* is attached), the district court addressed the very jurisdictional issue raised by the Court: Is an action between a New York corporation and a British Virgin Islands corporation an action between a citizen of a State and a citizen or subject of a foreign state? Finding that there was no distinction in status between Bermuda and the British Virgin Islands, *i.e.*, both are British Overseas Territories, Judge McKenna, following *Matimak*, answered the question in the negative and dismissed the action for want of jurisdiction. *Id.*

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The British Virgin Islands, like Bermuda and the Cayman Islands, are considered British Dependent Territories. *See* British Nationality Act of 1981 ch. 61, § 50(1), sch. 6 (listing the British Dependent Territories, which include, among others, Bermuda, the British Virgin Islands, and the Cayman Islands). Moreover, these dependent territories have not been formally recognized as foreign states by the United States. *See Koehler*, 209 F.3d at 139; *New Heaven*, 2000 U.S. Dist. LEXIS 706, at *5-*6. Nor are their citizens or corporations considered citizens or subjects of the United Kingdom. *See Matimak*, 118 F.3d at 85-86; *Koehler*, 209 F.3d at 139 (stating that "a corporation is a citizen or subject of the entity under whose sovereignty it is created"). *Cf.* British Nationality Act of 1981 ch. 61, § 50(1) (expressly defining the United Kingdom to include only Great Britain, Northern Ireland, the Channel Islands, and the Isle of Man). Under *Matimak* and its progeny, it appears that these facts warrant dismissal for lack of subject matter jurisdiction.[1]

1. To be sure, *Matimak* is not without detractors. In *Southern Cross Overseas Agencies, Inc. v. Wah Kwong Shipping Group, Ltd.*, 181 F.3d 410, 417-18 (3d Cir. 1999), the Third Circuit expressly disagreed with *Matimak* and instead relied upon the State Department's position that a Hong Kong corporation should be treated as a "subject" of the United Kingdom for purposes of diversity jurisdiction. Of course, the same argument was advanced by the Justice Department in *Matimak* and rejected. *See Matimak*, 118 F.3d at 86. Even on the Second Circuit bench there is some disagreement. In an order amending *Koehler*, Judges Cardamone and Newman asserted that absent *Matimak*, they would rule that citizens of Bermuda and other British Dependent territories are essentially subjects of the United Kingdom for purposes of alienage jurisdiction. *See Koehler v. Bank of Bermuda (New York) Ltd.*, 229 F.3d 424 (Cont'd)

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See, e.g., Universal Reinsurance, 224 F.3d at 142 (noting the even though action proceeded to final judgment if alienage jurisdiction is lacking the decision must be vacated and the case dismissed without prejudice).

In summary, because the British Virgin Islands is not a "foreign state," Traffic Stream, as a British Virgin Islands corporation, cannot be a "citizen or subject of a foreign state" for purposes of alienage jurisdiction. *See* 28 U.S.C. § 1332(a)(2).

Respectfully submitted,

s/ Shmuel Vasser
Shmuel Vasser

Enclosure

cc: Sarah L. Reid, Esq (by hand)
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(Cont'd)
(2d Cir. 2000). In addition, Judges Leval, Calabresi, and Sotomayor dissented from a denial of rehearing in banc in *Koehler* and suggested that this "issue of exceptional importance" should be reviewed by the entire Court. *See Koehler v. Bank of Bermuda (New York) Ltd.*, 229 F.3d 187, 193-94 (2d Cir. 2000).

Appendix F

ATTACHMENT TO SUPPLEMENTAL LETTER BRIEF — MEMORANDUM AND ORDER IN *NEW HEAVEN PROPERTIES LTD. v. GRINBERG*

NEW HEAVEN PROPERTIES LTD., Plaintiff, -against- SERGEY GRINBERG, GREEN SKY INTERNATIONAL TRADING CORP., CAPSTONE INVESTMENT CORP., JOSEPH F. INGRASSIA, JOHN R. RICE III and CAPSTONE & COMPANY, LLC., Defendants.

99 Civ.11546 (LMM)

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

2000 U.S. Dist. LEXIS 706

January 24, 2000, Decided

January 26, 2000, Filed

* * *

MEMORANDUM AND ORDER

McKENNA, D.J.

1.

Defendants Grinberg and Green Sky International Trading Corp. ("Green Sky") move, pursuant to Fed. R. Civ. P. 12(b)(1), for an order dismissing this action for lack of subject matter jurisdiction. Plaintiff moves, pursuant to *id.* 41(a)(2), for an order of voluntary dismissal without prejudice.

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The complaint alleges that plaintiff is a British Virgin Islands corporation (but does not allege the location of its principal place of business), that the individual defendants are residents of New York, and that the other defendants are New York entities, the principal "office[s]" of which are located in New York. Subject matter jurisdiction is predicated on 28 U.S.C. § 1332(a)(2). No federal question is alleged.

Grinberg and Green Sky assert that there is no subject matter jurisdiction because plaintiff's principal place of business is in New York and (in the alternative) that plaintiff is not the real party in interest, which is either Boviol International Corp. or NASL Corp., both said to be New York corporations.

Plaintiff seeks a voluntary dismissal because it appears that there may not be subject matter jurisdiction under *Matimak Trading Co. v. Khalily*, 118 F.3d 76 (2d Cir. 1997). *Matimak* has been followed in several Southern District cases cited by plaintiff. *Koehler v. Bank of Bermuda (New York) Ltd.*, 1998 U.S. Dist. LEXIS 13574, No. 96 Civ. 7885 (JFK), 1998 WL 557595 (S.D.N.Y. Sept. 2, 1998); *United States Fidelity & Guar. Co. v. Braspetro Oil Servs. Co.*, 1999 U.S. Dist. LEXIS 7236, No. 97 Civ. 6124 (JGK), 1999 WL 307666 (S.D.N.Y. May 17, 1999); and *III Fin. Ltd. v. Aegis Consumer Funding Group, Inc.*, 1999 U.S. Dist. LEXIS 18518, No. 99 Civ. 2579 (DC), 1999 WL 1080371 (S.D.N.Y. Nov. 30, 1999).

Defendants Ingrassia, Rice and Capstone & Company, LLC, while they join in the motion of Grinberg and Green Sky, made it clear at oral argument that their main concern is that, if the present case is dismissed and plaintiff brings

substantially the same case in the New York State Supreme Court (as it says it intends to do if this case is dismissed) plaintiff should not be allowed to then seek dismissal in the state court and commence a third action in this Court, with the further expense and inconvenience that would cause.

2.

The Court considers its subject matter jurisdiction first. *Filetech S.A. v. France Telecom S.A.*, 157 F.3d 922, 929-30 (2d Cir. 1998).

3.

The motion of Grinberg and Green Sky presents, as to both of its alternative grounds, factual issues which (to the extent relevant) cannot be resolved except at a hearing or, perhaps, by the submission of further papers, preceded, in fairness to both sides, by some discovery. *See Kamen v. American Tel. & Tel. Co.*, 791 F.2d 1006, 1011 (2d Cir. 1986).

The complaint, however, must be dismissed for lack of subject matter jurisdiction on a different ground, that brought to the Court's attention by plaintiff's motion.

28 U.S.C. § 1332(a)(2), on which plaintiff premises subject matter jurisdiction, grants the district courts subject matter jurisdiction "of all civil actions where the matter in controversy exceeds the sum or value of $ 75,000, exclusive of interest and costs, and is between . . . (2) citizens of a State and citizens or subjects of a foreign state." 28 U.S.C. § 1332(a)(2). In *Matimak*, the court held that a Hong Kong

corporation was "not a 'citizen or subject of a foreign state,' under 28 U.S.C. § 1332(a)(2)." 118 F.3d at 88. In *Koehler*, Judge Keenan applied *Matimak* as controlling in finding that two Bermuda corporations (in addition to an individual resident of Bermuda) were "not citizens of a foreign state for purposes of diversity jurisdiction." 1998 WL 557595 at *7. In *United States Fidelity & Guaranty*, Judge Koeltl similarly applied *Matimak* in finding that a Cayman Islands corporation was "not a 'citizen or subject of a foreign state' within the meaning of 28 U.S.C. § 1332(a)(2)." 1999 WL 307666 at *4. And in *III Finance*, Judge Chin also found, under *Matimak*, that a Cayman Islands corporation was not "a 'citizen or subject' of a 'foreign state.'" 1999 WL 1080371 at *3.[1] The Court must follow *Matimak*, and concludes that *Koehler, United States Fidelity & Guaranty, III Finance* and *Klein* all correctly apply *Matimak*.

Counsel for plaintiff notes that he is not aware of a distinction between Bermuda and the Cayman Islands, on the one hand, and the British Virgin Islands, on the other (Dannenberg Aff. P 7), and the Court is also unaware of any such distinction. *III Finance* supports the proposition that there is none. *See* 1999 WL 1080371 at *1 n.1 (classifying,

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1. See also *Klein v. Marriott Int'l., Inc.*, 34 F. Supp. 2d 176 (S.D.N.Y. 1999), in which Judge Connor applied *Matimak* to find that a Bermuda corporation was "not a 'citizen or subject of a foreign state' within the meaning of 28 U.S.C. § 1332(a)(3)." 34 F. Supp. 2d at 179. Judge Connor noted that, under *Matimak*, the term "foreign state" was to be construed consistently throughout the jurisdictional statute, i.e., in the same way in 28 U.S.C. § 1332(a)(2) and *id.* (a)(3). 34 F. Supp. 2d at 179 n.10.

as "British Overseas Territories," Bermuda, the British Virgin Islands and the Cayman Islands (among others)).[2]

The location of plaintiff's principal place of business — which plaintiff asserts is Russia, although the complaint does not allege that — is irrelevant to the subject matter jurisdiction issue, because, as put by Judge Bonsal in *Mazzella v. Panoceanica A/S Panama*, 232 F. Supp. 29 (S.D.N.Y. 1964), "subsection (c) of 28 U.S.C. § 1332, which makes a corporation a citizen for diversity purposes of the state in which the corporation has its principal place of business, does not apply to alien corporations." 232 F. Supp. at 31 n.1 (citing *Eisenberg v. Commercial Union Assurance Co.*, 189 F. Supp. 500 (S.D.N.Y. 1960)). In *Eisenberg*, Judge Dimock explained:

> It is to be noted that the statute differentiates between States of the United States and foreign states by the use of a capital S for the word when applied to a State of the United States. Subdivision (c), therefore, in dealing with the place of incorporation refers only to a corporation incorporated in a State of the United States. When subdivision (c) goes on to deal with principal place of business it refers to the same corporation and thus only to a corporation incorporated in a State of the United States.

189 F. Supp. at 502.

2. The source of the cited note in *III Finance* is a White Paper, "Partnership for Progress and Prosperity, Britain and the Overseas Territories," prepared by the Secretary of State for Foreign and Commonwealth Affairs by Command of Her Majesty in March 1999. (Ex. A. to Aff. of James Arden, Esq., filed in *III Finance*).

In *Clarkson Co. v. Shaheen*, 544 F.2d 624 (2d Cir. 1976), the Second Circuit, in what appears to be dictum, expressed the view that the quoted reasoning of Eisenberg is probably the correct one. "As alien corporations organized under the laws of another country, PRC and NRC are probably deemed to be citizens exclusively of Canada for diversity purposes." 544 F.2d at 628 n.5. The Court of Appeals described Eisenberg as "the leading case on the subject." *Id.*

For the foregoing reasons, the Court concludes that it does not have subject matter jurisdiction of this case.

4.

In view of the above, the Court need not reach plaintiff's motion for voluntary dismissal without prejudice. Aware, however, that there are different views of the applicability of 28 U.S.C. § 1332(c) to alien corporations, *see, e.g.*, *Bergen Shipping Co. v. Japan Marine Servs., Ltd.*, 386 F. Supp. 430, 432-33 (S.D.N.Y 1974), the Court notes that, were it to reach plaintiff's motion, it would grant it at this early stage of the litigation, but on the condition, *see* Fed. R. Civ. P. 41(a)(2), that the dismissal be with prejudice to reinstituting the case in this Court on an assertion of subject matter jurisdiction based on 28 U.S.C. § 1332, in order to avoid the kind of prejudice suggested by defendants Ingrassia, Rice and Capstone & Company, LLC.

* * * Complaint dismissed for lack of subject matter jurisdiction.

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SO ORDERED.

Dated: January 24, 2000

Lawrence M. McKenna

U.S.D.J.

APPENDIX G — SUPPLEMENTAL BRIEF FOR PLAINTIFF-APPELLEE DATED DECEMBER 18, 2000

00-7721

UNITED STATES COURT OF APPEALS
for the
SECOND CIRCUIT

THE CHASE MANHATTAN BANK, as Indenture Trustee, under the Indenture, dated as of May 6, 1998,

Plaintiff-Appellee,

-against-

TRAFFIC STREAM (BVI) INFRASTRUCTURE LIMITED,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

SUPPLEMENTAL BRIEF FOR PLAINTIFF-APPELLEE

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* * *

Appendix G

PRELIMINARY STATEMENT

Plaintiff-Appellee, The Chase Manhattan Bank, as Indenture Trustee (the "Trustee" or "Chase"), under the Indenture, dated as of May 6, 1998 (the "Indenture"), of Traffic Stream (BVI) Infrastructure Limited ("Traffic Stream"), pursuant to which were issued $119,000,000 aggregate principal amount of Traffic Stream's 14¼% Senior Secured Notes due 2006 (the "Notes"), submits this supplemental brief in opposition to Traffic Stream's appeal from the judgment entered by the United States District Court for the Southern District of New York on May 9, 2000, based upon the Opinion and Order of the Honorable Shira A. Scheindlin, dated January 31, 2000, granting Chase's motion for summary judgment.

FURTHER ISSUES PRESENTED ON APPEAL

1. Do the Federal Courts have subject matter jurisdiction over an action by a New York corporation against a British Virgin Islands corporation under the alienage jurisdiction provisions of 28 U.S.C. § 1332(a)(2) in view of the uniform positions of the United States, the United Kingdom and the British Virgin Islands that residents and corporations from United Kingdom Overseas Territories, including the British Virgin Islands, are subjects of the United Kingdom and thus entitled to invoke such jurisdiction?

2. Should this Panel overrule *Peregrine Myanmar Ltd. v. Segal*, 89 F.3d 41 (2d Cir. 1996), which held that diversity jurisdiction does exist in the case of a British Virgin Islands corporation?

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FURTHER STATEMENT OF THE CASE

At oral argument for this appeal on December 1, 2000, this Panel, *sua sponte*, raised the issue of whether subject matter jurisdiction existed under 28 U.S.C. § 1332(a)(2) in light of the fact that the defendant Traffic Stream was incorporated in an United Kingdom Overseas Territory, namely the British Virgin Islands. The Panel referred the parties to three cases in which the Second Circuit found that residents and corporations from Hong Kong and Bermuda were not "citizens or subjects of a foreign state" for purposes of alienage jurisdiction. Specifically, these cases were: *Matimak Trading Co. v. Khalily*, 118 F.3d 76 (2d Cir. 1997), *cert. denied*, 522 U.S. 1091 (1998); *Koehler v. Bank of Bermuda (New York) Ltd.*, 209 F.3d 130 (2d Cir.), *amended by* 229 F.3d 424 (2d Cir.), *reh'g en banc denied by* 229 F.3d 187 (2d Cir. 2000); and, *Universal Reinsurance Co., Ltd. v. St. Paul Fire & Marine Insurance Co.*, 224 F.3d 139 (2d Cir. 2000) (collectively the "Matimak line of cases").

This issue is being raised after the District Court ordered Chase to foreclose on over $47 million of collateral prior to submitting its request for a deficiency judgment. (JA 375). *See* Chase's Brief as Appellee, dated September 22, 2000 (hereafter "Chase Brief'), at 6 n.4. Because Traffic Stream has not posted any appeal bond or otherwise sought any stay pending appeal, Chase, after specific direction from the Holders of the Notes ("Noteholders"), disbursed most of the $47 million to the Noteholders. Even after this foreclosure, Traffic Stream still owes Chase (and the Noteholders) over $98 million, which is the amount of the deficiency judgment which was entered by the Clerk after the District Court's opinion and order (JA 429-30). *See* Chase's Brief, at 14.

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Chase respectfully submits that it would be inappropriate for this Panel to extend the Matimak line of cases to the British Virgin Islands, in view of the 1996 precedent of this Court which found that jurisdiction existed in a case involving a British Virgin Islands corporation. *Peregrine Myanmar Ltd. v. Sepal*, 89 F.3d 41, 45 n.4 (2d Cir. 1996). This is particularly true where the public positions of the United Kingdom, the Attorney General of the British Virgin Islands and the Department of State, as expressed in publicly-filed amicus briefs filed earlier this year, are available to this Panel and compel the conclusion even under the *Matimak* analysis that the residents and corporations of the British Virgin Islands are "subjects" of the United Kingdom, and hence entitled to invoke alienage jurisdiction.

ARGUMENT

I.

APPLYING MATIMAK TO THE RESIDENTS AND CORPORATIONS OF THE BRITISH VIRGIN ISLANDS WOULD OVERRULE THIS COURT'S PRIOR PRECEDENT

In a case that preceded Matimak, the Second Circuit in *Peregrine Myanmar Ltd. v. Segal* was faced with a situation where a plaintiff, which was incorporated in the British Virgin Islands, brought an action against a defendant that was domiciled in New York. 89 F.3d at 45 n.4. The plaintiffs asserted state law claims that included breach of contract, breach of fiduciary duty, unfair competition and tortious

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interference with prospective economic advantage. *Id.* at 43. The Court held that:

> [Defendant] admits on appeal that she is domiciled in New York (which the evidence supports) and that the district court therefore had subject matter jurisdiction over the case. [One plaintiff] is incorporated in the British Virgin Islands and [the other plaintiff] is incorporated in Myanmar. Both have their principal place of business in Myanmar. There is therefore complete diversity between the parties.

Peregrine Myanmar Ltd., 89 F.3d at 45 n.4.

For this Panel to now hold that there is no subject matter jurisdiction because Traffic Stream is incorporated in the British Virgin Islands, this Panel would have to overrule *Peregrine Myanmar Ltd.* Rather than overrule *Peregrine Myanmar Ltd.*, Chase urges this Panel to conclude that there is subject matter jurisdiction for actions involving residents and corporations from the British Virgin Islands.[1] Otherwise

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1. Although in *New Heaven Properties Ltd. v. Grinberg*, 2000 WL 64842 (S.D.N.Y. Jan. 26, 2000) Judge McKenna found that there was no subject matter jurisdiction for a case involving a British Virgin Islands plaintiff, Chase urges this Court to follow the multiple actions from the Southern District that involved parties from the British Virgin Islands. *See, e.g., One Hundred Pearl Ltd. v. Vantage Sec. Inc.*, 887 F. Supp. 636, 637 (S.D.N.Y. 1995); *Charles Ulmer, Inc., Sailmakers v. Van Ost*, 1991 WL 29277 (S.D.N.Y. Feb. 26, 1991) (Defendant in caption listed as "BVI" corporation); *Lama Holding Co. v. Shearman & Sterling*, 758 F. Supp. 159, 160 (S.D.N.Y. 1991).

Chase respectfully suggests that the Panel refer the matter for en banc consideration in view of the public importance of the issues raised, the disagreement among the Court as to the application of *Matimak* (*see, Koehler v. Bank of Bermuda (New York) Ltd.*, 229 F.3d. 187 (2d Cir. 2000) (Sotomayor, J., dissenting)), and the fact that both the Department of State and the United Kingdom have expressed a desire to present their views to the Second Circuit in view of their disagreement with the *Matimak* decision.

II.

MATIMAK WAS DECIDED WITHOUT THE BENEFIT OF CERTAIN INFORMATION WHICH WOULD LEAD TO A CONCLUSION THAT THE RESIDENTS AND CORPORATIONS OF THE BRITISH VIRGIN ISLANDS ARE THE SUBJECTS OF THE UNITED KINGDOM

In *Matimak Trading Co. v. Khalily*, 118 F.3d 76 (2d Cir. 1997), *cert. denied*, 522 U.S. 1091 (1998) the Court held that residents and corporations from Hong Kong were not "citizens or subjects of a foreign state" for purposes of alienage jurisdiction. While the *Matimak* decision concerned Hong Kong, later decisions have applied its analysis to other United Kingdom Overseas Territories. *See, e.g., Koehler v. Bank of Bermuda (New York) Ltd.*, 209 F.3d 130 (2d Cir.), *amended by* 229 F.3d 424 (2d Cir.), *reh'g en banc denied by* 229 F.3d 187 (2d Cir. 2000) (Bermuda); *III Finance Ltd. v. Aegis Consumer Funding Group, Inc.*, 1999 WL 1080371 (S.D.N.Y. Nov. 30, 1999) (Cayman Islands). Before this Court extends *Matimak* to the British Virgin Islands, it is important that the Court consider information that is available to this

Panel, which was not available to the *Matimak* Court, namely the amici briefs filed by the United Kingdom and the Department of State earlier this year in a case involving the very issue of alienage jurisdiction over a British Virgin Islands corporation. These briefs, which were submitted to the United States Court of Appeals for the Firth Circuit in the matter captioned *ART 57 Properties, Inc. v. 57 BB Property, L.L.C.*, No. 99-10385 (5th Cir.) (affirmance reported at 212 F.3d 596 (5th Cir. 2000)), are attached hereto at Appendix I.[2]

In particular, the *Matimak* court did not have the position of the United Kingdom before it. *Matimak Trading Co.*, 118 F.3d at 78 (listing only the United States Department of Justice as amicus curiae); *see also Favour Mind Ltd. v. Pacific Shores, Inc.*, 1999 WL 1115217, at *4 (S.D.N.Y. Dec. 7, 1999) ("[In *Matimak*] the Second Circuit had before it no affirmative evidence that the government of Great Britain considered Hong Kong Corporations to be British Citizens.") Accordingly, as set forth in the UK ART 57 Brief at point III, the *Matimak* Court misinterpreted the law of the United Kingdom, and thus altered the result of the analysis that was applied in *Matimak*.

At the core of the *Matimak* analysis was "the truism that a foreign state is entitled to define who are its citizens or subjects." *Matimak Trading Co.*, 118 F.3d at 85. The Court in *Matimak* then went on to try to determine whether the United Kingdom considered corporations from the United

2. Hereinafter, the United Kingdom's and the State Department's briefs in the *ART 57 Properties, Inc.* matter will be referred to as the "UK ART 57 Brief" and the "US ART 57 Brief," respectively.

Kingdom Overseas Territories as citizens or subjects of the United Kingdom. *Id.* at 85-86. The Court looked to both the British Nationality Act 1981 and the British Companies Act 1948. *Id.* The *Matimak* court concluded that under the law of the United Kingdom, corporations from the Overseas Territories were not citizens or subjects of the United Kingdom, and thus were "stateless". *Id.* at 86. The United Kingdom, interpreting its laws, disagrees.

A. The United Kingdom Considers British Virgin Island Corporations to be "Citizens or Subjects" of the United Kingdom

Since *Matimak* the United Kingdom has made several court submissions that make it extremely clear: The United Kingdom, under its own laws, considers the residents and corporations of its Overseas Territories to be "citizens or subjects" of the United Kingdom. *See* UK ART 57 Brief.[3]

The UK ART 57 Brief states that "[t]he position of the United Kingdom Government is that entities incorporated in any territory for which the United Kingdom is

3. The UK ART 57 Brief is by no means the only time that the United Kingdom has asserted that the residents and corporations of its Overseas Territories are its subjects. This position was also asserted in the United Kingdom's amicus curiae brief in support of a petition for a writ of certiorari to the Supreme Court in *Matimak* (hereinafter "UK Matimak Brief") and the United Kingdom's amicus curiae brief in support of the plaintiff's opposition to a motion to dismiss in the matter captioned *III Finance Ltd. v. Aegis Consumer Funding Group, Inc.*, No. 99 Civ. 2579 (DC) (S.D.N.Y.) [decision reported at 1999 WL 1080371 (S.D.N.Y. Nov. 30, 1999)] (hereinafter "UK III Finance Brief").

internationally responsible are regarded by the United Kingdom Government as United Kingdom nationals and, therefore are 'citizens or subjects' of the United Kingdom for purposes of alienage jurisdiction." *See* UK ART 57 Brief, at 4-5.

The UK ART 57 Brief goes on to explain that while "Great Britain" is the collective term for England and Wales, and Scotland, the "United Kingdom," as a State and subject of international law, includes Northern Ireland, the United Kingdom Overseas Territories and the Crown Dependencies. *See* UK ART 57 Brief, at 5. Like England and Wales, Scotland, and Northern Ireland, each Overseas Territory and Crown Dependency are separate law districts, entitled to enact their own laws in accordance with their constitutions. *See* UK ART 57 Brief, at 6. Although each law district has separate laws, they all belong to one state, the United Kingdom, and are subject to United Kingdom sovereignty. *See* UK ART 57 Brief, at 6.

In the UK ART 57 Brief, the United Kingdom provided proof of its open declaration of willingness to recognize and take responsibility for entities organized under the laws of the United Kingdom's Overseas Territories. *See* UK ART 57 Brief, at 6-8. Importantly, under the United Kingdom Government's Diplomatic Service Procedure Manual, Vol. 7, Annex 1 (Mar. 1996) (a copy of which is annexed to the UK ART 57 Brief as Exhibit 2), the term "United Kingdom National" is defined to include "[c]ompanies incorporated under the law of the United Kingdom or of any territory for which the United Kingdom is internationally responsible." *See* UK ART 57 Brief, at Exhibit 2, Rule 1(b).

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The fact that the United Kingdom would opine that the citizens and corporations formed under the laws of the United Kingdom's Overseas Territories are United Kingdom subjects is not surprising in light of the "close and wide-ranging" constitutional relationship between the "metropolitan" United Kingdom[4] and the United Kingdom Overseas Territories. *See* UK ART 57 Brief, at 14. For example, the Governor of the British Virgin Islands, which is appointed by the Queen, is responsible for core government functions like internal security, public service and court administration. *Id.* Similarly, any bill passed by the Legislative Council of the British Virgin Islands must be approved by the Governor and the Queen, with such procedure including a careful review by the Foreign and Commonwealth Office. *See* UK ART 57 Brief, at 14-15.

In fact, the very law under which Traffic Stream is incorporated in the British Virgin Islands as an "international business company", namely Chapter 291 of the Revised Laws of the Virgin Islands, was enacted pursuant to a specific grant in the 1976 British Virgin Islands Constitution.[5] This "trend sett[ing]" statute has made the British Virgin Islands a well known tax haven and has led to it "being characterized as an

4. The "metropolitan" United Kingdom includes England and Wales, Scotland and Northern Ireland. *See* UK ART 57 Brief, at 5.

5. The 1976 British Virgin Islands Constitution was issued by Queen Elizabeth as an Order in Council, acting pursuant to her sovereign prerogative and statutory authority from Parliament under Section 5 of the West Indies Act. 6 Halsbury's Laws of England, United Kingdom Dependencies ¶ 1079 (1991), *citing*, *inter alia*, West Indies Act 1962, § 5.

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'offshore Delaware.'" W. & D. Diamond, 1 *Tax Havens of the World, British Virgin Islands* 1, 2 (1999). Thus, corporations organized under this statute, which created "international business corporations", are subjects of the United Kingdom's sovereignty.

1. *According to the United Kingdom, the Companies Act 1948 Does Not Support the Matimak Result*

As is pointed out in the UK ART 57 Brief, the *Matimak* court's reliance on the Companies Act 1948 was misplaced.[6] *See* UK ART 57 Brief, at 11-12. The court in *Matimak* apparently concluded that only corporations incorporated under that act could be considered a United Kingdom company. This view, however, confuses "Great Britain" with the "United Kingdom" and fails to recognize that each law district has an equivalent of the Companies Act.[7] "The companies legislation of one law district is not superior to or more authentic than that of another." *See* UK ART 57 Brief, at 11. In fact, as the Diplomatic Service Procedure Manual indicates, all companies incorporated in any of the United Kingdom's law districts are entitled to the full protection of the United Kingdom in their dealings with foreign states. *Id.*

6. The Companies Act 1948 was replaced by the Companies Act 1985. *See* Companies Act, 1985, ch. 6 (Eng.).

7. For example, companies in Northern Ireland, which is a separate law district, are incorporated not under the Companies Act 1985 but under the Companies (Northern Ireland) Order 1986, No. 1032, ch.6 (N.Ir.). *See* UK ART 57 Brief, at 12.

2. *The BVI Attorney General Has Opined That BVI Corporations are Subjects of The United Kingdom*

This Panel also has the advantage of a statement from the British Virgin Islands' Attorney General that fully supports the conclusion that residents and corporations of the British Virgin Islands are subjects of the United Kingdom. *See* UK ART 57 Brief, at Exhibit 3 ("On behalf of the Government of the British Virgin Islands, I fully support the arguments and conclusions presented in the [*ART 57 Properties*] Brief of the United Kingdom.").

Under the appropriate standards, this Panel should give deference to the United Kingdom's statement of who are its citizens and subjects, which is concurred in by the British Virgin Islands itself. It is axiomatic that the best interpreter of the laws of a foreign nation is the foreign nation itself. When a foreign land provides a court of the United States with that foreign nation's interpretation of its own laws, that interpretation should be given great deference. *Iwanowa v. Ford Motor Co.*, 67 F.Supp. 2d 424, 490 (D. N.J. 1999). As was recognized by the Court in *Matimak*, a foreign nation is entitled to define who are its citizens and subjects, which should be recognized by other nations. *See United States v. Wong Kim Ark*, 169 U.S. 649, 668 (1898) ("Nor can it be doubted that it is the inherent right of every independent nation to determine for itself, and according to its own constitution and laws, what classes of persons shall be entitled to its citizenship."); *Murarka v. Bachrack Bros.*, 215 F.2d 547, 553 (2d Cir. 1954) ("It is the undoubted right of each country to determine who are its nationals, and it seems to be general international usage that such a determination

will usually be accepted by other nations."); *see also Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg & Feldman Fine Arts, Inc.*, 917 F.2d 278, 285 (7th Cir. 1990) ("[G]enerally accepted test for determining whether a person is a foreign citizen for purposes of 28 U.S.C. § 1332(a)(2) is whether the country in which citizenship is claimed would so recognize him.")

To ignore such a statement would be tantamount to telling the government of the United Kingdom that a United States court is better suited to determine who its citizens and subjects are.[8]

B. The Matimak Ruling Has Caused and Continues to Cause Foreign Entanglements with the United Kingdom

Another important part of the *Matimak* analysis was the concept that because residents and corporations from the United Kingdom's Overseas Territories were "stateless" there would be no problems of foreign policy entanglements. *See Matimak Trading Co.*, 118 F.3d at 87 ("there is no danger

8. In *Favour Mind Ltd. v. Pacific Shores, Inc.*, 1999 WL 1115217 (S.D.N.Y. Dec. 7, 1999), Judge Scheindlin, in addressing the issue of whether corporations from post-reversion Hong Kong were now residents of China, held that "this explicit statement by China compels this Court to find that Hong Kong SAR corporations are citizens of China and that Favour Mind may therefore invoke the alienage jurisdiction of the federal district courts." *Id.* at *7. Judge Scheindlin went on to note as important that in *Favour Mind*, "unlike in *Matimak*, the three relevant governments — the United States, the Hong Kong SAR and, most important, China — all agree that Hong Kong SAR corporations are citizens of China. *Id.* at *7 n.12.

of foreign entanglements, as there is no sovereign with whom the United States could become entangled.") Based on the submissions from both the United Kingdom and the United States Department of State, it is now evident that such a ruling has created entanglements with one of this country's closest allies.

As the court in *Matimak* stated, "[t]he raison d'etre of alienage jurisdiction is to avoid 'entanglements with other sovereigns that might ensue from failure to treat the legal controversies of aliens on a national level'." *Matimak Trading Co.*, 118 F.3d at 82 (quoting *Iran Handicraft & Carpet Exp. Ctr. v. Marjan Int'l Corp.*, 655 F. Supp. 1275, 1277 (S.D.N.Y.), *aff'd* 868 F.2d 1267 (2d Cir. 1988)); *see also Sadat v. Mertes*, 615 F.2d 1176, 1186 (7th Cir. 1980) ("[T]he paramount purpose of the alienage jurisdiction provision [is] to avoid offense to foreign nations because of the possible appearance of injustice to their citizens.").

The result of *Matimak*, the treatment of residents and corporations from the United Kingdom's Overseas Territories as "stateless" and, thus, denying them the ability to bring suit in Federal Court, has clearly created concern for the United Kingdom and embroiled the Department of State in an "entanglement" with the government of the United Kingdom.[9] The Matimak decision has created the very

9. As Judge Sotomayor noted in her opinion dissenting from the denial of an en banc review of the *Koehler v. Bank of Bermuda (New York) Ltd.* matter: "[T]here can be no doubt that the fundamental purpose of alienage jurisdiction — to void offense to foreign nations — is frustrated by the Matimak decision and its further application (Cont'd)

problem that alienage jurisdiction was designed to prevent, namely an international tension with a valued ally and important trading partner.

The fact that the United Kingdom is concerned over this issue is self-evident from the fact that the United Kingdom submitted the UK ART 57 Brief, the UK Matimak Brief and the UK III Finance Brief to the Courts of the United States. In addition, the United Kingdom has also issued a Diplomatic Note that specifically expressed the United Kingdom's "concern about a number of judicial decisions which have denied corporations of United Kingdom Overseas Territories access to United States Federal Courts." *See* Diplomatic Note No. 13/2000 from the British Embassy in Washington, D.C. to the United States State Department, Feb. 2, 2000 at 1 (attached to the UK ART 57 Brief as Exhibit 1). The Diplomatic Note further stated: "The United Kingdom also views with great concern the potential application of the Matimak rationale to individual Overseas Territories residents, as well as to commercial enterprises." *Id.*

(Cont'd)
by this panel." 229 F.3d 187, 188 (2d Cir. 2000) (dissenting). As Judge Sotomayor pointed out, it is ironic that the nation that is offended by the ruling in *Matimak*, the United Kingdom, is "the very country the drafters of the alienage jurisdiction provision had in mind more than two hundred years ago when they sought to open the federal courts to foreign litigants." *Id.* at 189. The Founding Fathers, recognizing the importance of continued commerce with the United Kingdom, included the concept of alienage jurisdiction due to a fear that state courts would not enforce the debts of British creditors after the Revolutionary War. *See* Kevin R. Johnson, *Why Alienage Jurisdiction? Historical Foundations and Modern Justifications For Federal Jurisdiction Over Disputes Involving Noncitizens*, 21 Yale J. Int'l L. 1, 7-8 (1996).

It is clear that part of the concern about the *Matimak* decision by the United Kingdom comes from the belief that the United States is not providing comity in this instance. The Diplomatic Note states:

> The United Kingdom notes that all corporations validly incorporated under the laws of the United States and its territories are entitled to sue and be sued in the courts of the United Kingdom and its Overseas Territories. As a matter of international comity and reciprocity, the United Kingdom considers that United States Federal Courts should be open to corporations established in United Kingdom Overseas Territories.

See UK ART 57 Brief, at Exhibit l; *see also* UK ART 57 Brief, at 21 (noting that corporations incorporated under the political subdivisions of the United States such as Delaware, Puerto Rico and American Samoa are entitled to bring suit in the United Kingdom even though these political subdivisions are not recognized by the United Kingdom as sovereign states). Any extension of the *Matimak* decision to the British Virgin Islands places in further jeopardy the comity which is owed to the United Kingdom in this regard.

C. The Department of State Agrees That BVI Residents and Corporations are Subjects of the United Kingdom

The United States Department of State has also recognized the entanglement that has been created by the application of the *Matimak* decision and has actively asserted the position that residents and corporations from the United

Kingdom's Overseas Territories should be deemed subjects of the United Kingdom. *See* US ART 57 Brief.[10]

It is no wonder that the Department of State agrees with the United Kingdom. At the international level, it is undisputed that the United Kingdom is responsible for the British Virgin Islands. For example, the United Kingdom not only negotiates international treaties on behalf of the British Virgin Islands, but also executes them on behalf of the British Virgin Islands. *See, e.g.*, United Kingdom of Great Britain and Northern Ireland (on Behalf of the British Virgin Islands) and the United States of America: Exchange of Letter Constituting a Narcotics Cooperation Agreement with Respect to the British Virgin Islands, 1681 U.N.T.S. 451 (1987). Thus, the United States recognizes the United Kingdom as the Sovereign over the British Virgin Islands.

In addition, the terms of the Consular Convention between the United States and the United Kingdom provide the framework for consular relations between the two nations. Consular Convention, 3 U.S.T 3426, T.I.A.S. No. 2494 (1952). The Consular Convention clearly states that it applies "to all territories over which the United States has jurisdiction or international responsibility and to all British Territories." Treaties in Force as of Jan. 1, 1999 at 303 (1999); *see also*

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10. The State Department has also asserted its position in an amicus curiae brief that was submitted in *Matimak* (hereinafter "US Matimak Brief") and in an amicus curiae brief to the United States Court of Appeals in the matter captioned *Southern Cross Overseas Agencies, Inc. v. Wah Kwon Shipping Group Ltd.*, No. 98-5185 (decision reported at 181 F.3d 410 (3rd Cir. 1999)) (hereinafter "US Southern Cross Brief"). The *Southern Cross* court upheld jurisdiction.

Consular Convention, Art. 1, Sec. (2), 3 U.S.T. at 3427 ("Convention applies . . . on the part of his Majesty . . . to all His Majesty's colonies.") The Consular Convention also defines "nationals' of the United Kingdom as "all citizens of the United Kingdom and colonies . . . including, where the context permits, all judicial entities duly created under the law of any of those territories." Consular Convention, Art. 2, Sec. (4), 3 U.S.T. at 3428. Since the Consular Convention clearly shows that the United States government recognizes that the government of the United Kingdom is responsible for corporations created under the laws of the British Virgin Islands, the conclusion in *Matimak*, which is based on a contrary notion, is inconsistent with the position of the United States government, especially the executive branch. In this manner, the State Department's position that residents and corporations of the United Kingdom's Overseas Territories are subjects of the United Kingdom is clearly aligned with the dictates of the Consular Convention and is consistent with an attempt to avoid foreign policy difficulties with the United Kingdom. In such instances, when dealing with issues of foreign policy, the courts should give deference to the reasonable interpretation proffered by the Executive branch. *See Jones v. United States*, 137 U.S. 202, 212-14 (1890); *Regan v. Wald*, 468 U.S. 222, 242 (1984); *United States v. Diacolios*, 837 F.2d 79, 83-84 (2d Cir. 1988); *Tawain v. United States Dist. Court for the N. Dist. of Cal.*, 128 F.3d 712, 718-19 (9th Cir. 1997).

D. The Issue Presented Raises Serious Concerns for the Commercial World

It is undisputed that the Overseas Territories of the United Kingdom, like the British Virgin Islands, Bermuda, the Cayman Islands and the islands of Turks and Caicos are emerging financial centers.[11] As residents and corporations from these emerging markets contract with citizens of the United States, the *Matimak* decision clearly places uncertainty into these commercial relationships, especially in light of the fact that many of these contracts (like the Indenture in this case) call for a New York forum, including the possibility of suit in the United States District Courts in order to avoid any perceived prejudice a foreign party may encounter in state court.

Because of these emerging and increasing financial/economic relationships, the United Kingdom and the United States have taken a keen interest in the issue presented in *Matimak* and have asserted positions that are contrary to the

11. In the UK ART 57 Brief the United Kingdom stated that:

> By recent estimates, there were over 350,000 international business companies in the British Virgin Islands. There were 563 banks, 377 insurance companies, and 33,792 business companies incorporated in the Cayman Islands. In Bermuda there were 1,400 insurance companies and 6,824 business companies incorporated. In the Turks and Caicos Islands, 1911 insurance companies and 11,000 business companies were incorporated.

UK ART 57 Brief, at 20.

conclusion reached in *Matimak*. Both the United Kingdom and the United States have expended considerable efforts on this issue, indicating just how important it is to them. In fact, although the short nature of the briefing schedule for this supplemental submission prevented them from filing an official submission at this point, counsel for both the United Kingdom and the United States have indicated to Chase's counsel that they would seriously consider filing amicus briefs on this issue in this case, either on a rehearing en banc or on a petition for certiorari to the Supreme Court. Since this issue is of such importance to not only the parties, but also the governments of the United States and the United Kingdom, Chase respectfully submits that to the extent this Panel feels constrained by *Matimak*, it should refer the matter to be heard en banc.

However, in the first instance, Chase urges this Panel to follow the decision in *Peregrine Myanmar Ltd.* rather than extend *Matimak* to the British Virgin Islands. In cases like this, which involve considerable controversy,[12] there is no reason for this Panel to overrule a prior recent precedent.

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12. The critics of the *Matimak* decision have included: other courts (*see, e.g., Southern Cross Overseas Agencies, Inc. v. Wah Kwong, Shipping Group Ltd.*, 181 F.3d 410, 418 (3rd Cir. 1999)); judges within this circuit (*see, e.g., Koehler v. Bank of Bermuda (New York) Ltd.*, 229 F.3d 187 (2d Cir. 2000) (Judges Sotomayor, Leval and Calabresi dissenting); *Koehler v. Bank of Bermuda (New York) Ltd.*, 229 F.3d 424 (2d Cir. 2000) (Judges Cardamone and Newman stating that they "would rule that citizens of Bermuda and other British Dependent Territories are sufficiently subject to the sovereignty of the United Kingdom to satisfy the alienage clause of the diversity statute"); *Matimak Trading Co. v. Khalily*, 118 F.3d 76, 88-92 (Cont'd)

CONCLUSION

For all of the foregoing reasons as well as those set forth in Chase's Brief filed with this Court on September 22, 2000, Chase respectfully requests that the Court affirm the judgment of the District Court and grant to Chase such other and further relief as is just.

Dated: December 18, 2000
New York, New York

(Cont'd)

(2d Cir. 1997) (Judge Altimari dissenting)); and commentators (*see, e.g.*, Frank Eric Marchetti, *Alienage Jurisdiction Over Stateless Corporations: Revealing the Folly of Matimak Trading Company v. Khalily*, 36 San Diego L. Rev. 249 (Winter 1999); Jennifer L. Coviello, *Access Denied: A Case Comment on Matimak Trading Co. v. Khalily*, 18 N.Y.L. Sch. J. Int'l & Comp. L. 435 (1999); Theresa M. Monzina, *Why is There Any Question? Hong Kong and Alienage Jurisdiction: A Critical Analysis of Matimak Trading Co. v. Khalily and D.A.Y.*, 10 Pace Int'l L.Rev. 575 (Fall 1998)). Likewise, The Fourth and Seventh Circuits, either prior to *Matimak* or without discussing *Matimak*, have held that citizens of the United Kingdom's Overseas Territories are subjects of a foreign state for purposes of alienage jurisdiction. *Koehler v. Dodwell*, 152 F.3d 304, 308 (4th Cir. 1998); *Wilson v. Humphreys (Cayman) Ltd.*, 916 F.2d 1239, 1242-43 (7th Cir. 1990), *cert. denied*, 499 U.S. 947 (1991).

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[EXHIBITS TO SUPPLEMENTAL BRIEF FOR PLAINTIFF-APPELLEE ARE BEING SUBMITTED SEPARATELY AS A LODGING]